

Panaji, 24th July, 2014 (Sravana 2, 1936)

SERIES II No. 17

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 16 dated 17-07-2014 namely, Extraordinary dated 22-07-2014 from pages 285 to 288 regarding Notification/Notices from Department of Elections (Goa State Election Commission) and Department of Panchayati Raj & Community Development (Directorate of Panchayats).

This issues in supersession of order No. 23/3/89-EDN/Part-III/1123 dated 06-5-2014.

By order and in the name of the Governor of Goa.

Devidas S. Gaunkar, Under Secretary (Higher Education).

Porvorim, 16th June, 2014.

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Higher Education

Order

No. 23/3/89-EDN/Part-III/1427

Read: 1) Government order No. 23/3/89-EDN/Part-III/4 dated 31-12-2012 and addendum dated 21-8-2013.

2) Government order No. 23/3/89-EDN/Part-III/1123 dated 06-5-2014.

Dr. Sitaram V. Sukhthankar, Associate Professor of Commerce of the Government College of Arts, Science & Commerce, Khandola is hereby directed to officiate as Acting Principal, Government College of Arts, Science and Commerce, Khandola in addition to his regular duties, with immediate effect and until further orders.

Dr. Sitaram V. Sukhthankar shall function as Drawing and Disbursing Officer of the Government College of Arts, Science & Commerce, Khandola, while officiating as Acting Principal of the said College.

Consequently, Dr. Seema Rath, Officiating Principal, Government College of Arts, Science & Commerce, Khandola, stands relieved from her additional charge with immediate effect.

Directorate of Technical Education
College Section

Order

No. 11/4/100/AVB/PF/DTE/2014/1005

Read: Memorandum No. DTE/ADC/11/1/43/2008/PI/3445 dated 04-02-2014.

On the recommendations of the Goa Public Service Commission conveyed vide their letter No. COM/I/5/33(9)/2013/344 dated 02-12-2013, Government is pleased to appoint Shri Anant Venkatesh Bhandarkar on temporary basis to the post of Assistant Professor in Pharmacognosy (Group 'A', Gazetted) at Goa College of Pharmacy, Panaji-Goa, with initial pay of Rs. 15,600/- in the pay scale of ` 15,600-39,100 plus Academic Grade pay ` 6,000/- w.e.f. the date of joining as per the terms & conditions contained in the Memorandum cited above.

Shri Anant Venkatesh Bhandarkar will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by Medical Board, Goa Medical College & Hospital, Bambolim vide letter No. 4/105/85/H/GMC/2014/131 dated 06-03-2014. His character and antecedents have been verified and nothing adverse is reported against him as conveyed by the Additional Deputy Commissioner & Additional District

Magistrate, Dharwad vide No. MAG/4/VER/CR-06/14-15 dated 28-06-2014.

By order and in the name of the Governor of Goa.

Bhaskar Nayak, Director & ex officio Addl. Secretary (Technical Education).

Porvorim, 11th July, 2014.

Order

No. 16/328/SSA/PF/DTE/2014/1038

Read: Memorandum No. 16/139/Fill-Posts/GEC/ /DTE/PF-IV/728 dated 19-06-2014.

On the recommendations of the Goa Public Service Commission conveyed vide their letter No. COM(I)/5/18(8)/2013/560 dated 19-05-2014, Government is pleased to appoint Kum. Smita Sadanand Aldonkar on temporary basis to the post of Assistant Professor in Civil Engineering (Group 'A', Gazetted) at Goa College of Engineering, Farmagudi in the pay scale of ` 15,600-39,100+ Academic Grade Pay ` 6,000/- with pay protection (as recommended by Goa Public Service Commission) w.e.f. date of joining the post as per the terms & conditions contained in the Memorandum cited above.

The appointment is against the post of Assistant Professor in Civil Engineering created vide Order No. DE/TECH/TA/66/12293 dated 10-05-1967 and revived vide Order No. 16/250/Creation & Revival of Posts of GEC/DTE/10/2405 dated 12-07-2010 and subsequently revived vide Order No. 16/250/ /Creation & Revival of Posts of GEC/DTE/10/756 dated 18-06-2013 (Non-Plan-post at Sr. No. 8).

Kum. Smita Sadanand Aldonkar will be on probation for a period of two years.

She should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

She has been declared fit by Medical Board, Goa Medical College & Hospital, Bambolim vide their letter No. 4/106/84-H/GMC/4782 dated 19-05-2008. Her character and antecedents have been verified and nothing adverse is reported against her as conveyed by the Additional District Magistrate, North Goa, Panaji vide letter No. 2/VCA/Misc/2008/213/1597 dated 10-10-2008 during her selection as Lecturer in Civil Engineering in Government Polytechnic, Bicholim.

By order and in the name of the Governor of Goa.

Bhaskar Nayak, Director & ex officio Addl. Secretary (Technical Education).

Porvorim, 14th July, 2014.

Department of Finance

Revenue & Control Division

Directorate of Accounts

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Order

No. DA/Admn/45-4/2014-2015/TR-793/30

Consequent upon issue of order No. DA/Admn/ /45-4/2014-2015/TR-713/25 dated 27-06-2014 posting Smt. Vrinda Kambli, Joint Director of Accounts to District Rural Development Agency the additional charge of District Rural Development Agency (North), Panaji given to Shri Minguel D. S. Fernandes, Joint Director of Accounts stands withdrawn.

By order and in the name of the Governor of Goa.

G. P. Kanekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 1st June, 2014.

Order

No. DA/Admn/45-4/2014-2015/TR-713/25

The Government is pleased to order the transfer and posting of Smt. Vrinda Kambli, Joint Director of Accounts, presently working in the Directorate of Health Services, Panaji to District Rural Development Agency (North), Panaji on deputation with immediate effect, in public interest.

The deployment of Smt. Vrinda Kambli, Joint Director of Accounts will be on deputation basis initially for a period of one year in the first instance from the date of taking over the charge and shall be regulated as per the standard terms of deputation contained in the Office Memorandum No. 13/4/74-PER dated 12-02-1999 and even No. dated 11-01-2007 as amended from time to time.

The District Rural Development Agency(North), Panaji-Goa, shall be liable to pay to the Government, leave salary and pension contribution in respect of Smt. Kambli at the prescribed rates.

Smt. Vrinda Kambli, Joint Director of Accounts shall stand relieved on expiry of deputation period and shall report back to the parent Department, unless the deputation period is extended by the Competent Authority. In the event Smt. Kambli, overstays for any reason whatsoever, she will be liable for disciplinary action and other adverse Civil Service consequences.

On joining her new assignment, the officer shall send CTC/Joining Report to this Directorate immediately for records.

By order and in the name of the Governor of Goa.

G. P. Kanekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 27th June, 2014.

Order

No. DA/Admn/45-5/2014-2015/TR-789/28

The Government is pleased to order the transfer and posting of Shri Anand M. Naik, Dy. Director of Accounts/Accounts Officer, posted on promotion in River Navigation Department, Betim-Goa to Department of Information Technology, Porvorim-Goa with immediate effect, in public interest.

On joining his new assignment, the officer shall send CTC/Joining Report to this Directorate immediately for records.

By order and in the name of the Governor of Goa.

G. P. Kanekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 1st July, 2014.

Order

No. DA/Admn/45-2/2014-2015/TR-792/29

Government is pleased to promote Shri Surya Chodankar, Assistant Accounts Officer under the Common Accounts Cadre to the post of Dy. Director of Accounts/Accounts Officer (Group "A", Gazetted) in the Pay Band-3 ` 15,600-39,100 Grade Pay ` 5,400/- purely on ad hoc basis with effect from the date of taking over charge of the post.

Government is further pleased to order the posting of Shri Surya Chodankar, Dy. Director of Accounts/Accounts Officer on promotion in River Navigation Department, Betim-Goa, thereby relieving Shri Mahadev D. Morajkar, Joint Director of Accounts of additional duties.

The ad hoc promotion shall be for a period of one year or till the regular promotion of the above officer, through a duly constituted D.P.C., whichever is earlier. The ad hoc promotion will not bestow on the officer any claim for regular appointment/promotion and the services rendered by him in the grade will not count for the purpose of seniority

in the grade or for eligibility for promotion to the next higher grade.

On joining his promotional post, the Officer shall send CTC/Joining Report immediately to this Directorate.

By order and in the name of the Governor of Goa.

G. P. Kanekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 1st July, 2014.

Order

No. DA/Admn/45-3/2014-2015/TR-816/50

Government is pleased to promote Shri Nilesh R. Gaonkar (ST), Accountant under the Common Accounts Cadre to the post of Assistant Accounts Officer (Group "B", Gazetted) in the Pay Band-2 ` 9,300-34,800 Grade Pay ` 4,600/- purely on ad hoc basis with effect from the date of taking over charge of the post.

Government is further pleased to order the posting of Shri Nilesh R. Gaonkar, Assistant Accounts Officer in the Directorate of Education, Porvorim-Goa. He shall however continue to hold charge of the post of Accountant in addition to his duties as Assistant Accounts Officer, till such time a regular substitute is posted.

The ad hoc promotion shall be for a period of one year or till the regular promotion of the above officer, through a duly constituted D.P.C., whichever is earlier. The ad hoc promotion will not bestow on the officer any claim for regular appointment/promotion and the services rendered by him in the grade will not count for the purpose of seniority in the grade or for eligibility for promotion to the next higher grade.

On joining his promotional post, the Officer shall send CTC/Joining Report immediately to this Directorate.

By order and in the name of the Governor of Goa.

G. P. Kanekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 1st July, 2014.

Order

No. DA/Admn/45-1/2014-2015/TR-788/27

Government is pleased to promote Shri Lakhu B. Rawal, Accounts Officer/Dy. Director of

Accounts under the Common Accounts Cadre to the post of Joint Director of Accounts (Group "A", Gazetted) in the Pay Band-3 ` 15,600-39,100 Grade Pay ` 6,600/- purely on ad hoc basis with effect from the date of taking over charge of the post.

Government is further pleased to order the posting of Shri Lakhu B. Rawal, Joint Director of Accounts on promotion in the O/o the Director General of Police, Police (HQ), Panaji-Goa.

The ad hoc promotion shall be for a period of one year or till the regular promotion of the above officer, through a duly constituted D.P.C., whichever is earlier. The ad hoc promotion will not bestow on the officer any claim for regular appointment/promotion and the services rendered by him in the grade will not count for the purpose of seniority in the grade or for eligibility for promotion to the next higher grade.

On joining his promotional post, the Officer shall send CTC/Joining Report immediately to this Directorate.

By order and in the name of the Governor of Goa.

G. P. Kanekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 1st July, 2014.

Order

No. DA/Admn/45-5/2014-2015/TR-939/38

Shri Suresh Divkar, Dy. Director of Accounts/Accounts Officer, drawing his pay in PB-3, ` 15,600-39,100+ G.P. ` 5,400/- and presently working in the Directorate of Accounts, Panaji is transferred and posted as Director (Admn) in Kala Academy Goa, Panaji on deputation with immediate effect.

The deployment of Shri Suresh Divkar, Dy. Director of Accounts will be on deputation basis initially for a period of one year in the first instance from the date of taking over the charge and shall be regulated as per the standard terms of deputation contained in the Office Memorandum No. 13/4/74-PER dated 12-02-1999 and even No. dated 11-01-2007 as amended from time to time.

Shri Suresh Divkar shall exercise an option to opt either for the pay of the deputation post or the present pay in the PB-3, ` 15,600-39,100+ G.P. ` 5,400/- and deputation allowance.

The Kala Academy Goa, Panaji-Goa, shall be liable to pay to the Government, leave salary and

pension contribution in respect of Shri Divkar at the prescribed rates.

Shri Suresh Divkar, Dy. Director of Accounts shall however stand relieved on expiry of deputation period and shall report back to the parent Department, unless the deputation period is extended by the Competent Authority. In the event Shri Divkar, overstays for any reason whatsoever, he will be liable for disciplinary action and other adverse Civil Service consequences.

He shall however continue to hold the additional charge of the post of Dy. Director of Accounts in the Directorate of Accounts, Panaji-Goa, in addition to his own duties until alternate arrangement is made.

On joining his new assignment, the officer shall send CTC/Joining Report to this Directorate immediate for records.

This is issued with the approval of Government.

By order and in the name of the Governor of Goa.

G. P. Kanekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 1st July, 2014.

Department of General Administration

Order

No. 14/8/2001-GAD-III/Part I/1712

On the recommendation of the Local Departmental Promotion Committee, and with the approval of the Government, the following Stenographer Grade I and Senior Assistant are hereby promoted to the post of Section Officer (Group "B", Gazetted) in the Secretariat in the pay scale of PB-2: ` 9,300-34,800+ GP ` 4,600/- on ad hoc basis for an initial period of one year or till the posts are filled on regular basis, whichever is earlier:

1. Smt. Ana C. Marques Fernandes.
2. Shri Santosh L. Dicholkar.
3. Shri Jafrulla Khan.

The above ad hoc promotions shall not confer any right for regular promotion, and the services so rendered shall not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

The expenditure towards pay and allowances of the officials shall be debited to the Budget Head shown against their names:

Sr. No.	Name	Budget Head
01.	Smt. Ana C. Marques Fernandes	2052 — Secretariat General Services; 00 — 090 — Secretariat (Non-Plan); 03 — Finance Department; 01 — Salaries.
02.	Shri Santosh L. Dicholkar	-do-
03.	Shri Jafrulla Khan	2052 — Secretariat General Services; 00 — 090 — Secretariat (Non-Plan); 04 — Law Department; 01 — Salaries.

They may exercise their option for fixation of the pay in the promotional grade in terms of F. R. 22(I)(a)(1) within a period of one month from the date of their promotion as Section Officer. The option once exercised shall be final.

The posting order is being issued separately.

By order and in the name of the Governor of Goa.

Varsha S. Naik, Under Secretary (GA).

Porvorim, 11th July, 2014.

Order

No. 14/8/2001-GAD-III(Part II)/1721

Government is pleased to extend the ad hoc promotion of Shri Mukund Khandeparkar, Section Officer, Public Grievances Cell, Secretariat, Porvorim-Goa for a period of one year with effect from 21-06-2014 to 20-06-2015, or till the post is filled on regular basis, whichever is earlier.

This issues with the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/42(4)/2012/557 dated 03-07-2014.

By order and in the name of the Governor of Goa.

Varsha S. Naik, Under Secretary (GA).

Porvorim, 11th July, 2014.

Department of Labour

Notification

No. 28/1/2013-Lab/652

The following award passed by the Labour Court-II at Panaji-Goa on 13-06-2013 in reference No. IT/42/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Meena Priolkar, Under Secretary (Labour).

Porvorim, 18th September, 2013.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. IT/42/07

Shri Leslie Fernandes,
Near the Church,
Neura-Goa

....Workman/Party I

V/s

M/s. Wallace Pharmaceuticals Pvt. Ltd.,
3rd floor, Dempo Trade Centre Bldg.,
Patto-Plaza, EDC Complex,
Panaji-Goa

.... Employer/Party II

Party I/Workman represented by Adv. Shri P. J. Kamat.

Party II/Employer represented by Adv. Shri M. S. Bhandodkar.

Panaji, dated: 13-6-2013.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 23-08-2007, bearing No. 28/31/2007-Lab/898 referred the following dispute for adjudication to the Industrial Tribunal of Goa at Panaji. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present reference to this Labour Court II for its adjudication vide its order dated 23-06-2008.

“(1) Whether the action of the Management of M/s. Wallace Pharmaceuticals Private Limited, Panaji, Goa, in refusing employment to Shri Leslie Fernandes, Driver, with effect from 29-5-2006, is legal and justified?”

(2) If not, to what relief the Workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/42/07 and registered AD notice was issued to both the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party I (for short 'Workman') filed his Statement of Claim on 23-10-2007 at Exhibit-5. The facts of the case, in brief as pleaded by the Workman are that he was employed with the Employer/Party II (for short 'Employer') as a driver w.e.f. 1-12-1995 and confirmed in service vide letter of the Employer dated 18-7-1996. The Workman stated that the Employer has its factory at Bethora, Ponda-Goa and is involved in the manufacturing of pharmaceuticals, cosmetics and such other products for last more than 30 years. He stated that he was initially attached to the Chairman and Managing Director of the Company till December, 2002.

3. He stated that on or about 28-12-2002 the Employer terminated his service without any cause. He stated that he took up the matter of his illegal and unjust termination before office of the Labour Commissioner and Conciliation Officer, Panaji, Goa. He stated that when the Employer realized that its action is not legal during the pendency of the conciliation proceedings he was taken back in service with effect from 15-7-2003 at its factory at Bethora, Ponda-Goa. He stated that he was under medical treatment in GMC under ESIC Scheme and reported for work on 28-01-2004 after he was declared fit to resume work. He stated that he was not allowed to punch his card for attendance, but he was informed by the security personnel to take his attendance manually. He stated that he was not paid bonus for the year 2002-03 even after the last date of payment of bonus under the Payment of Bonus Act. He stated that the Employees State Insurance Corporation did not give him sickness benefit on account of non-payment of ESIC contributions by the Employer.

4. He stated that he was not paid his wages in time for the period starting from April, 2004 to September, 2004 and were withheld deliberately. He stated that he therefore made complaints to the Commissioner, Labour and Employment, Panaji, Goa vide his letters dated 24-05-2004, dated 17-06-2004 and dated 04-10-2004 for recovery of wages u/s 33-C(1) of the I. D. Act, 1947 respectively to that effect. He stated that the Labour Commissioner, Panaji, Goa issued a recovery

certificate dated 20-08-2004 against the Employer to the Collector of North Goa for recovery of the withheld wages of April, 2004 to July, 2004 from the Employer. He stated that Collector, North Goa, Panaji issued a notice dated 04-04-2005 to the Mamlatdar of Ponda for immediate action. He stated that the Mamlatdar of Ponda recovered a sum of Rs. 46,054.66 as part payment and the balance amount was paid by the Employer Company on 13-05-2006.

5. He stated that on 03-07-2004 he had gone for half day after informing the Personnel Officer. He stated that inspite of the same, the Employer issued him a show cause notice dated 03-07-2004 on 06-07-2007 alleging that he had gone half day off without informing anybody and made further baseless allegations. He denied that he had committed any acts of misconduct for warranting the warning letter dated 09-07-2004.

6. He stated that when the Employer realized that no amount of harassment including withholding of wages for a year and issue of unwarranted warning, would make him to leave service of his own, the Employer issued a letter of transfer dated 09-05-2006 transferring him to Dharwad in Karnataka State at M/s. Wallace Laboratories Pvt. Ltd., which was not the unit of the Employer. He stated that he being a driver and a native of Goa, does not know the language of the place of transfer nor the roads of the place. He stated that he received the letter of transfer dated 09-05-2006 under protest. He stated that he informed the Employer in writing by reply dated 20-05-2005 that he cannot be transferred to any other State outside Goa as the Employer has no establishment in Dharwad. He submitted that the transfer is illegal and non-est and that it is made to victimize and harass him for the reasons mentioned in his reply dated 20-05-2006. He stated that the Employer replied on 26-05-2006 to his letter dated 20-05-2006, but did not withdraw the transfer order. He stated that he continued to report at Bethora factory as usual as the transfer is illegal and non-est.

7. He stated that on 29-05-2006 he went to report for work as usual, but he was not allowed to report for work and was refused employment with effect from 29-05-2006. He stated that thereafter he went to the factory to report for work again on 30-05-2006, and 31-05-2006 but he was not allowed to report for work. He stated that in the meantime, he received a letter dated 29-05-2006 from the Head Office of the Employer, informing him that a relieving letter dated 27-05-2006 was offered to him at 4.45 p.m. on 27-05-2006 and that

he had refused to accept the same. The Employer further stated in the said letter dated 29-05-2006, a copy of the letter dated 27-5-2006 was enclosed along with the said letter. He stated that he received a letter dated 29-5-2006 without any enclosure and the said fact was accordingly informed to the Employer in his letter dated 1-6-2006. He stated that he demanded with the Employer to reinstate him in service at Bethora, Ponda Goa with full back wages and continuity in service within seven days of the receipt of the said letter. He stated that the Employer however did not reinstate him in service at Bethora. He stated that he raised dispute before the Commissioner, Labour and Employment, Panaji vide his letter dated 8-06-2006, which ended in failure.

8. He submitted that the General Manager HRD and administration is his Appointing Authority and as such said Appointing Authority alone has the right to transfer him if such transfer is provided for in the letter of appointment or the certified standing order of the Company, if applicable to him. He stated that under clause 5 (a) of the letter of appointment dated 27-11-1995 he is liable to be transferred to any department, of his or establishment forming part of the organization. He submitted that clause 21 of the Certified Standing Orders of the Employer provides for transfer from one job to another or from one department/section to another or from one unit or establishment to another unit or establishment (existing or future) or from one section to another of the Company/firm. He submitted that proviso to clause 21 provides that if the employee is transferred from one place to another on a job which is capable of doing and provided also that were the transfer involves moving from one State to another such transfer shall take place, either with the consent of the employee or where there is a specific provision to that effect in the letter of appointment. He submitted that his transfer is non-est as it is neither in accordance with the letter of appointment dated 27-11-1995 nor in accordance with the Certified Standing Orders as he has not consented for such transfer as is evident from his letter dated 20-05-2006 sent to the Employer.

9. He submitted that an illegal, inoperative, void and non-est order of transfer need not be obeyed and he continues to be the employee of the Employer. He submitted that refusal of employment to him amounts to retrenchment. He submitted that at the time of refusal of employment, he was neither given one months notice or wages in lieu of notice or retrenchment

compensation as provided u/s 25-F of the I.D. Act, 1947. He therefore submitted that the refusal of employment to him w.e.f. 29-05-2006 is illegal and unjustified and he is entitled to the relief of reinstatement in service at Bethora factory of the Employer with full back wages and other benefits. He submitted that he is unemployed since the time of his termination.

10. The Employer controverted the claim of the workman by filing its written statement on 16-01-2008 at Exb. 9. The Employer Company, by way of preliminary objection submitted that the entire reference is bad in law, not maintainable and ought to be rejected in limine as at no point of time it has refused employment to the workman even on 29-05-2006 or thereafter. The Employer submitted that for the business exigencies and requirements the services of the workman was transferred at M/s. Wallace Laboratories Pvt. Ltd., its sister concern at Belur, Dharwad w.e.f. 01-06-2006 vide letter dated 09-05-2006. The Employer submitted that the appropriate Government to raise any dispute before the authority is Karnataka State and not Goa Government. The Employer submitted that since the workman was transferred, the workman should have reported at the place of transfer and then only ought to have raised the dispute before the appropriate authority of the respective State. The Employer submitted that the present dispute cannot be termed as 'Industrial Dispute' as transfer itself cannot be a dispute. The Employer submitted that it is a better judge to run its business in professionalized manner and in the interest of the organization. The Employer submitted that it has full jurisdiction and power to deploy the appropriate manpower at the appropriate place depending upon the business exigencies and requirements.

11. The Employer Company admitted that the workman was employed as a driver w.e.f. 01-12-1995 and was confirmed in the said post vide letter dated 18-07-1996. The Employer stated that the workman committed certain serious misconducts and neglected his duties, he was warned and cautioned vide letter dated 14-11-2000. The Employer submitted that since there was no improvement in the behaviour of the workman, he was issued a show cause notice dated 29-12-2000. The Employer stated that the workman was issued another letter dated 31-01-2001 for neglecting his duties. The Employer stated that pursuant to it also, there was no improvement and he continued his careless and negligence towards

his duties. The Employer stated that inspite of above warning letter, the workman again committed misconducts and derelict in his duties. The workman was therefore issued a show cause notice dated 01-06-2001. The Employer stated that the workman admitted his guilt and submitted an apology letter. The Employer submitted that the workman was suspended for a period of three working days by letter dated 07-06-2001.

12. The Employer stated that the workman was again found missing from his duty place during working hours on 08-06-2001. The Employer stated that because of his negligence, the officers could not reach Panaji at scheduled time. The workman was therefore issued a show cause notice on 11-06-2001 and subsequently he was again cautioned on 30-11-2001 for dereliction of his duties. The Employer stated that the workman was again issued a memo dated 04-07-2002 for his negligence, carelessness while discharging his duties and he was asked to submit a reply as to why an action should not be taken against him. The Employer submitted that inspite of various letters, cautions there was no improvement in his behaviour and again he refused to obey the reasonable orders of the superiors and was very arrogant with the other staff. The Employer stated that the workman subsequently, intentionally and purposely abandoned his duties, thereby causing inconvenience to the staff who visited at GMC. The workman was therefore issued a memo dated 03-01-2003. The Employer stated that in the said memo issued to the workman, he was further informed that by his act of remaining absent it is presumed that he is not interested in continuing his employment and his name would be struck off from its roll.

13. The Employer stated that the workman was asked to update his leave card as his leave record was not up-to-date. The Employer stated that his salary for the month of November and December, 2002 was therefore withheld, so that he should regularize his leave record. The Employer submitted that having fully aware that because of his leave record, his salary was withheld, he made false, mischievous and baseless allegations against them vide his letter dated 31-12-2002. The Employer stated that the workman remained absent without permission and/or information and since he, on his own accord, remained absent without information and permission, his services were terminated by letter dated 10-01-2003. The Employer stated that by letter dated 18-01-2003, the workman tried to justify his unauthorized

absence on the pretext of sickness, though in reality he was not sick at all, and was moving around the places, at and near the residence of its Managing Director. The Employer stated that the workman by his letter dated 18-01-2003 again made false and baseless allegations to justify his unauthorized absence and demanded for reinstatement with continuity in service and back wages. The Employer submitted that though the workman was offered his unpaid salary and other dues on 20-01-2003, he refused to accept the same. The Employer submitted that it has therefore by its letter dated 24-02-2003, again asked the workman to collect the dues in full and final settlement immediately as it could facilitate to clear the account before the end of closure of financial year. The Employer stated that thereafter the workman raised the dispute before the Labour Commissioner vide letter dated 03-02-2003. The Employer stated that thereafter a settlement was arrived at before the Asstt. Labour Commissioner and Conciliation Officer on 07-10-2003.

14. The Employer admitted that the workman met with an accident on 09-09-2003 and was suffering from a severe leg injury, causing a fracture to his left leg. The Employer stated that there was surgery operation on the left leg to fix the broken bone. The Employer stated that the workman has however not informed them about the same after receiving its letter dated 11-12-2003. The Employer stated that due to some technical and administrative difficulties for some time, it was not possible to allow the workman to punch his card, however his attendance was recorded. The Employer stated that the workman without appreciating the situation immediately made a baseless complaint to the Labour Commissioner on 13-12-2004. The Employer stated that it has filed its reply vide letter dated 19-02-2005 to the said complaint before the Asstt. Labour Commissioner.

15. The Employer stated that the records regarding the ESI were maintained at its Head Office. The Employer submitted that since the said forms were not received by the Ponda office, the workman was asked to bring new forms. The Employer stated that the workman had agreed and submitted the said form on 16-02-2004. The Employer stated that the workman informed the concerned officer that he will collect those forms, when he will resume the duties somewhere on 24-02-2004. The Employer stated that the workman instead of collecting the said forms as agreed made a false complaint to the ESI office alleging that its Personnel Officer has not filled the required forms to get him the disabled benefit under the provisions of the ESI.

16. The Employer stated that the workman had collected his salary for the month of April 2004 vide cheque No. 941146 dated 29-04-2004. The Employer stated that he however either misplaced and/or did not in cashed the said cheque. The Employer stated that since the said cheque was not in cashed and/or misplaced by the workman, for the purpose of confirmation about the misplaced cheque, there was some delay in payment of his salary amount. The workman however mischievously and intentionally to harass them filed a false complaint before the authority u/s 33-C (1) of the I. D. Act, 1947 and the Labour Commissioner issued the recovery certificate.

17. The Employer stated that the workman had violated the terms of the settlement and committed certain misconducts. Therefore, he was issued a show-cause notice dated 03-07-2004 and subsequently, a warning letter was issued to him on 09-07-2004. The Employer stated that the workman filed his so called reply dated 26-07-2004 wherein he had made false and baseless averments and allegations against them and a copy of the said letter was sent to the Asstt. Labour Commissioner. The Employer stated that the workman was therefore issued a letter dated 31-07-2004 observing his misbehavior and negligence committed by him. The Employer stated that since the workman committed grave and severe misconducts, he was issued a warning letter dated 09-07-2004 arising out of the misconduct. The Employer stated that the workman was informed that his letter of request dated 21-08-2004 for withdrawal of the said warning letter cannot be considered and further directed to improve his arrogant and adamant attitude. The Employer stated that workman was also advised not to make any false and unwarranted allegations.

18. The Employer stated that the workman again vide his letter dated 25-08-2004 addressed to its Vice President, Plant Operation made false allegation of victimization etc. The Employer stated that the workman was therefore issued another letter dated 04-09-2004 reiterating the contents of their earlier letter and also impress upon him that it was not responsible for his non-payment of salary, but the said salary remained to be paid because of his act solely. The Employer stated that the workman again made another letter dated 08-09-2004 alleging that the Company is harassing him. The Employer stated that since there was no end to the letters/correspondences from the workman making baseless, false allegations and falsely justifying his illegal acts, it has vide its letter

dated 21-09-2004 informed the workman that the said issue has been closed and no correspondence on the said subject will be entertain in future.

19. The Employer stated that because of carelessness and negligence while driving the vehicle, the workman was stopped by the Traffic Police Officer and he was fined and the said fine was paid by its officer for the fault of the workman. The Employer stated that the workman vide his letter dated 23-09-2004 made false allegation against them of not providing the uniform. The Employer stated that vide their letter dated 13-01-2005 addressed to the Labour Commissioner justified its action. The Employer stated that the workman was called to bring the vehicle to take one of the sick worker to the doctor on urgent basis. The Employer stated that the workman however inspite of the seriousness of the matter did not take the cognizance by not attending the cause and thereby neglected his duties. The Employer stated that the workman was therefore issued a show-cause notice and directed to submit the explanation.

20. The Employer stated that as the workman again involved in the misconducts, he was issued another show-cause notice dated 18-02-2005 asking him to submit written explanation. The Employer stated that the written explanation submitted by the workman vide his letter dated 22-02-2005 was far from satisfactory and on the contrary he again made the allegations of harassment and victimization. The Employer stated that since the entire act on the part of the workman clearly proves his misconducts, he was issued the warning letter dated 10-3-2005.

21. The Employer submitted that they in no way responsible and/or liable for the cause of delayed payment of the said amount to the workman. The Employer stated that it has made payment of Rs. 46054.66/- to the workman as his wages and other benefits arising out of the employment vide its letter dated 19-04-2005. The Employer stated that the workman disputed the said amount and further demanded a sum of Rs. 848/- from it and also filed a complaint before the Labour Commissioner. The Employer stated that the Labour Commissioner issued a notice to them. The Employer submitted that thereafter the matter was resolved on 11-05-2006. The Employer stated that since the workman had committed severe misconduct including a misconduct of sleeping on duties, he was issued a show cause notice dated 11-11-2005 under the provisions of its Certified Standing Orders. The Employer stated that the

workman submitted his explanation dated 16-11-2005 denying all the allegations. The Employer stated that the said explanation was not satisfactory.

22. The Employer stated that in view of the exigencies of the work, the services of the workman were transferred at its sister concern and the said transfer was in accordance with the provisions of Standing Orders applicable to its establishment and as per the appointment order issued to the workman. The Employer stated that the workman challenged the said transfer on various grounds. The Employer stated that a reasonable notice is given to the workman and he was also informed that he shall be paid travelling allowance including the transport charges and 50% thereof to meet incidental charge vide their letter dated 09-05-2006. The Employer stated that on 27-05-2006 a relieving letter was issued to the workman with an advice to report at Dharwad establishment. The Employer stated that the workman however refused to accept the said letter after going through it and therefore the said letter was sent at his address vide letter dated 29-05-2006. The Employer stated that since the services of the workman were transferred at Dharwad, the question of reporting at Bethoda on 29-05-2006, 30-05-2006 and 31-05-2006 does not arise and the said action cannot be called as refusal of employment.

23. The Employer stated that till 22-06-2006 the workman did not report at the transferred place and the work at the said place was affected. The Employer stated that the workman was therefore advised to report within seven days from the receipt of the said letter at his transferred place, otherwise they will be constrained to draw an irresistible presumption that he is no longer interested in their employment and that he has abandoned employment on his own accord, vide its letter dated 22-06-2006. The Employer stated that instead of reporting at his transferred place, the workman made some false allegations and also raised a false dispute before the Conciliation Officer about refusal of employment. The Employer stated that it has vide its letter dated 11-07-2006 again justified the transfer of services of the workman and further advised him to report at his transferred place and continue his employment.

24. The Employer submitted that the Manager (Personnel, H.O.) is the competent authority to issue the said transfer letter and its action of issuing transfer letter to the workman is just, proper and legal and there is no illegality in issuing the said

transfer order. The Employer submitted that the said authority has the right to transfer by virtue of Certified Standing Order of its establishment. The Employer submitted that while issuing the transfer letter it has complied with all the said provisions pertaining to transfer clause contained in its Certified Standing Order. The Employer submitted that at no point of time, it has refused employment to the workman and in fact, it is clear case of transfer and not refusal of employment. The Employer submitted that the Ld. Conciliation Officer could not understand the concept and terminology of transfer and wrongly contended that the said action of the Employer of transfer amounts to refusal of employment as alleged by the workman. The Employer submitted that when it has not refused employment to the workman, the question of illegal and unjustified refusal of employment w.e.f. 29-05-2006 or thereafter or that question of any reinstatement in service with full back wages and other benefits or otherwise does not arise. The Employer therefore prayed for dismissal of the present reference.

25. Thereafter, the workman filed his rejoinder on 07-02-2008 at Exb. 10. The workman by way of his rejoinder denies all the averments, contentions and submissions made by the Employer in its written statement which are contrary to and inconsistent with his averments, contentions and submissions and reiterates his case as stated in his claim statement. The workman submitted that there is no provision for such transfer either in the letter of appointment issued to him or in the Certified Standing Order of the Employer. The workman submitted that a non-est order is no order in the eyes of law. The workman submitted that the Certified Standing Order of the Company provides for the consent of the employee for transfer to sister concern or outside the State and this fact has been suppressed by the Employer while referring to its Certified Standing Orders.

26. Based on the pleadings filed by the respective parties, this court framed the following issue on 21-07-2008 at Exb. 13.

1. Whether the Workman/Party I prove that he was working as Driver for Party II/Employer continuously w.e.f. 1-12-1995 till 29-05-2006?
2. Whether the Workman/Party I prove that the refusal of employment to him by the Party II/Employer w.e.f. 29-05-2006 is illegal and unjustified?
3. Whether the Workman/Party I prove that the transfer order dated 09-05-2006 issued by the Party II transferring the services of the Party I/Workman is illegal, null and void?

4. Whether the Party II/Employer prove that the present order of reference issued by the Government of Goa is bad-in-law?
5. Whether the Party I prove that he is entitled to any relief?
6. What Award?

27. My answers to the aforesaid issues are as under:

Issue No. 1:	In the affirmative.
Issue No. 2:	In the affirmative.
Issue No. 3:	In the affirmative.
Issue No. 4:	In the negative.
Issue Nos. 5 & 6:	As per final order.

Reasons:

28. *Issue No. 1:* I have heard the oral arguments at the Ld. Advocates appearing for respective parties. I have also carefully perused the records of the present case including the synopsis of written arguments filed by the Ld. Advocate appearing for respective parties.

29. The workman has pleaded that he was employed by the Employer as a driver w.e.f. 01-12-1995 vide letter of appointment dated 27-11-1995. The workman also produced on record a copy of his letter of appointment dated 27-11-1995 (Exb. W/1) in support of his oral evidence. The aforesaid evidence on record has not been disputed by the Employer. Hence it is held that the workman was employed by the Employer as a driver w.e.f. 01-12-1995 vide letter of appointment dated 27-11-1995. The issue No. 1 is therefore answered in the affirmative.

30. *Issue No. 3:* I am deciding the issue No. 3 first prior to the issue No. 2 as the issue No. 3 is an incidental issue to the main issue No. 2.

I have heard the oral arguments of the Ld. Advocates appearing for respective parties.

31. Ld. Adv. Shri P. J. Kamat, representing the workman, during the course of his oral arguments submitted that the workman was employed with the Employer as driver w.e.f. 01-12-1995 continuously till the date of refusal of employment to him w.e.f. 29-05-2006. He submitted that the services of the workman were transferred at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad in Karnataka State which is a distinct and separate Company registered under the Companies Act, 1956. He submitted that the Employer Company has its Certified Standing Order. He submitted that the said transfer of the workman from the Employer Company to M/s. Wallace Laboratories Pvt. Ltd.,

Belur, Dharwad is in violation of rule 21 of its Certified Standing Order as well as clause 5 (a) of the appointment letter issued to the workman. He further submitted that thus the said transfer of the workman to M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is illegal, non-est and without any authority and as such need not be obeyed. In support of his oral contentions, he relied upon the following two judgements of Hon'ble Apex Court and a judgement of Hon'ble High Court of Calcutta.

- a. In the case of Banarasi Prasad and Ors. v/s Coal India Ltd., reported in 2001 III CLR 85 (86) of Hon'ble Calcutta High Court.
- b. In the case of Kundan Sugar Mills v/s Ziaddin and Ors., reported in 1950-77 Vol. 6, Pages 3837 of Hon'ble Supreme Court of India.
- c. In the case of Dr. R.C. Tyagi v/s Union of India and Ors. reported in 1994 (68) FLR 688 of Hon'ble Supreme Court of India.

32. On the contrary, Ld. Adv. Shri M. S. Bhandodkar representing the Employer Company during the course of his oral arguments submitted that Employer Company vide its letter dated 09-05-2006 transferred the services of the workman to its Dharwad establishment w.e.f. 01-06-2006 and directed him to report to Mr. M. A. Miskin, G. M. Plant Operations at the address of M/s. Wallace Laboratories Pvt. Ltd. site No. 213 (P) to 240 (P), KIADB Industrial area, Belur, Dharwad-580 005. He submitted that the services of the workman were not transferred to M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad but at its establishment at Belur, Dharwad. He submitted that the present order of reference issued by the Government of Goa pertains to the legality and justifiability of the action of the Employer in refusing employment to the workman w.e.f. 29-05-2006. He therefore submitted that the court cannot therefore adjudicate the issue of transfer as it amounts to beyond the scope and jurisdiction of this court. He submitted that clause 5 (a) of the appointment letter dated 01-12-1995 (Exb. W/1) issue to the workman provided for transfer of service of the workman. He therefore submitted that the transfer letter issued to the workman is just, fair and proper in accordance with clause 5 (a) of the appointment letter issued to the workman as well as provisions of its Certified Standing Order. He relied upon the following judgements in support of its oral contentions.

- a. In the case of Suresh S. Bhamre and Anr., v/s Devendra Purushottam Shinde, Police Inspector, Nasik and Ors. reported in 2004 (1) LLN 199 of Hon'ble High Court of Bombay.

- b. In the case of Vidyut Metallica Pvt. Ltd., v/s Maharashtra Rajya Rashtriya Kamgar Karmachari Sangh and Anr. reported in 2008 LLR 701 of Hon'ble High Court of Bombay.
- c. In the case of V.I.P. Industries Ltd., Satara v/s Maharashtra Kamgar Karmachari Sanghatana, Satara and Anr., reported in 2008 III CLR 22 of Hon'ble High Court of Bombay.
- d. In the case of K. Thirumalaisamy v/s The Managing Director, Tamil Nadu State Transport Corp. Ltd., reported in 2012 (5) LLN 486 of Hon'ble High Court of Madras.
- e. In the case of H. K. Chawala v/s Indian Oil Corp., reported in 2005 LLR 226 of Hon'ble Court of Delhi.
- f. In the case of U.P. Singh v/s Punjab National Bank, reported in 2011 LLR 708 of Hon'ble High Court of Delhi.
- g. In the case of M/s. Bharat Iron Works v/s Bhagubhai Balubhai Patel and Ors. in AIR 1976 98 of Hon'ble Supreme Court of India.

I have carefully perused the records of the present case including the synopsis of written arguments filed by the Ld. Advocate appearing for respective parties. I have also carefully considered the various oral as well as written submissions made by the Ld. Advocates for the respective parties.

33. Ld. Adv. Shri M. S. Bandodkar representing the Employer during the course of his argument submitted that the workman was transferred at the establishment of the Employer at Dharwad and not at M/s. Wallace Laboratories Pvt. Ltd., Belur Dharwad, but he was directed to report to Mr. M. A. Miskin, G. M. - Plant Operations at the address of M/s. Wallace Laboratories Pvt. Ltd., Site No. 213 (P) to 240 (P), KIADB Industrial Area, Belur, Dharwad- 580 005 by relying upon his transfer letter dated 9th May, 2006 (Exb. W/49). On the contrary, Ld. Adv. Shri P. J. Kamat representing the workman during the course of his oral arguments submitted that the written statement filed by the Employer on record clearly shows that the workman was transferred at M/s. Wallace Pharmaceuticals Ltd., Belur Dharwad and relied upon a decision of Hon'ble Supreme Court of India in the case of **Bondar Singh and Ors. v/s Nihal Singh and Ors. reported in AIR 2003 SC 1905(1)**, in support of his contention that no amount of evidence can be looked into without there being any pleading to that effect.

34. In the case of **Bondar Singh and Ors. v/s Nihal Singh and Ors., reported in AIR 2003 SC 1905 (1)**, the Hon'ble Apex Court in para 7 of its aforesaid judgment clearly observe as under:

" therefore in the absence of clear plea regarding sub-tenancy (shikmi) the defendant cannot be allowed to build up a case of sub-tenancy (shikmi). Had the defendants taken such a plea it would have found place as an issue in the suit. We have perused the issue framed in the suit. There is no issue on the point".

The principle laid down by the Hon'ble Apex Court in its aforesaid judgment is well recognized. On careful perusal of the written statement filed by the Employer, it is clearly seen that the Employer has consistently pleaded that due to business exigencies and requirements, the workman was transferred at company's sister concern M/s. Wallace Laboratories Pvt. Ltd., at Belur, Dharwad w.e.f. 01-06-2006 vide letter dated 09-05-2006. The aforesaid pleadings of the Employer clearly shows that the services of the workman were transferred at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad and not in its establishment at Belur, Dharwad. Hence, it is not allowed to the Employer to say that the workman was not transferred at M/s. Wallace Laboratories Pvt. Ltd., at Belur, Dharwad, but transferred at its establishment at Dharwad. Hence, the contention of the Ld. Adv. Shri M. S. Bandodkar appearing for the Employer does not stand valid in the eyes of law.

35. The evidence on record indicates that the Employer Company i.e., M/s. Wallace Pharmaceuticals Pvt. Ltd., Panaji-Goa and M/s. Wallace Laboratories Pvt. Ltd. Belur, Dharwad maintained its Profit and Loss Account and Balance Sheet separately. The profit or loss of both the aforesaid companies are not amalgamated together at any point of time. The evidence on record indicates that all the documentary evidence relied upon by the Employer do not refer to Wallace Group or Wallace Group Organization. The Employer Company and M/s. Wallace Laboratories Pvt. Ltd. are covered under the ESIC Act, EPF Act and other Labour legislations separately. The evidence on record indicates that there is no establishment by name Wallace Group has been registered under the ESIC Act, EPF Act and other Labor Legislations. The evidence on record further indicates that the income tax and sales tax returns are not filed under the name of Wallace Group. Thus the aforesaid evidence on record clearly indicates that the Employer Company i.e.

M/s. Wallace Pharmaceuticals Pvt. Ltd., Panaji-Goa and M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad are two distinct, separate and independent legal entities registered under the Companies Act and also covered under the ESIC Act, EPF Act and other Labour legislations separately.

36. *Ld. Adv. Shri M. S. Bandodkar* representing the Employer during the course of his oral arguments submitted that this court has no jurisdiction to decide the issue of transfer and relied upon the following judgments in support of his submission.

37. In the case of **Pottery Mazdoor Panchayat v/s The Perfect Pottery Co. Ltd. and Anr., reported in AIR 1979 SC 1356**, the Hon'ble Supreme Court of India held that *"the jurisdiction of the Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and to matters incidental thereto and that the Tribunal cannot go beyond the terms of the reference made to it"*.

38. In the case of **Firestone Tyre and Rubber Co. of India Pvt. Ltd. v/s Workman, reported in 1981 LAB I.C. 1110**, the Hon'ble Supreme Court of India has held that *"the tribunal was required to confine its adjudication to those points and matters incidental to them. From a reading of demands 1(A) and 1(B), as a whole, it is clear that the demand for reinstatement in respect of both the groups of workmen, as made arises on the alleged invalidity of the action taken by the management in dismissing these workmen. The issue of unfair labour practice or discrimination by reason of subsequent reinstatement on a permanent basis of some and not all the 25 workmen was not a matter referred to the Tribunal for adjudication, nor it can be said to be in any way connected with or incidental to the right of reinstatement claimed by the 101 workmen from the date of their dismissal. The fairness of subsequent absorption of some of the workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen along with others. It is an entirely separate and independent question. The Tribunal also did not frame an issue on the alleged discrimination. That being so, the Tribunal travelled outside its jurisdiction in recording a finding of unfair labour practice and discrimination"*.

39. In the case of **Reserve Bank of India, Nagpur v/s Central Government Tribunal-cum-Labour Court, Nagpur and Ors., reported in 2009 II CLR 385**, the Hon'ble High Court of Bombay has held that *"while passing the award the Tribunal went*

beyond the terms of the reference and entered into the question of policy pertaining to grant of pension to the widow and dependents of the employees, who had expired before 01-11-1990 when the pension scheme came into force. The observations of the Tribunal that she was not entitled to that benefit and the direction to refund the amount received by her towards the family pension and also the direction to refund the provident fund amount to her are also beyond the scope of the said reference. In view of this, the impugned award to that extent is liable to be set aside".

40. In the case of **Secretary (Policy) Regional Director (Food) Employees' Association, v/s Food Corporation of India and Ors., reported in 2010 (1) LLN 785**, the Hon'ble High Court of Calcutta has held that *"it is therefore clear that in view of provisions of Section 10 (4) of the Industrial Disputes Act, 1947 and the law declared by the Supreme Court, a Tribunal has no jurisdiction to adjudicate any point of dispute other than the ones, and matters incidental thereto, specified in the order of reference"*.

41. In the case of **Mahendra L. Jain and Ors. v/s Indore Development Authority and Ors., reported in AIR 2005 SC 1252**, the Hon'ble Supreme Court of India in para 34 of its judgment has held that *"....Furthermore the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four corners thereof. It could not enlarge the scope of the reference nor could deviate there from. A demand which was not raised at the time of raising the dispute could not have been gone into by the Labour Court not being the subject matter thereof"*.

42. In the case of **South Eastern Roadways Workmen's Union and Anr., v/s VIII Industrial Tribunal and Ors., 2005 (II) LLJ 1020**, the Hon'ble High Court of Calcutta in para 3.2 observed as under:

"This question cannot be gone into in view of the scope and ambit of reference, which was the only question so far as closure is concerned as to whether it was real or not. Whether the closure was justified or closure was invalid was not the question, which was referred to. The Tribunal while adjudicating the dispute cannot travel beyond the scope of the reference. It is only the question or the dispute that has been referred to the Tribunal by the Government the Tribunal has to confine its jurisdiction. The jurisdiction to adjudicate is conferred on the Tribunal only by reason of an order of reference u/s 10 (1) of the

Industrial Disputes Act, 1947. Therefore, neither the Tribunal nor the court can consider issues which are not referred to Tribunal”.

Thus, from the aforesaid judgments of Hon'ble Apex Court as well as Hon'ble High Courts relied upon by the Ld. Adv. Shri M. S. Bandodkar, it is now well settled that the jurisdiction of the Tribunal to adjudicate the reference is limited to the points specifically referred for its adjudication and to the matters incidental thereto.

43. In the case in hand, the reference issued by the Appropriate Government pertains to the legality and justifiability of the action of the Employer in refusing employment to the workman w. e. f. 29-05-2006. The court is therefore bound to answer the reference issued by the Government of Goa by adjudicating the matters within the four corners of law. Thus, the court has no jurisdiction to adjudicate the issue of legality and justifiability of the action of the management in transferring the services of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad. However the court has every jurisdiction to decide the validity of the transfer of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad as an incidental issue.

44. The evidence on record indicates that the services of the workman were transferred at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad, in Karnataka State, which is a distinct, separate and independent Company and not the unit or establishment of the Employer Company. The workman did not report at his place of transfer, but continued to report at Bethora, Ponda-Goa, though he was relieved from the said place. The workman was thereafter refused employment w. e. f. 29-05-2006 on the pretext of transfer.

45. The said transfer of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is without any authority and contrary to rule 21 of the Certified Standing Order of the Employer as well as clause 5 (a) of letter of appointment issued to the workman. Thus, the transfer of the workman is illegal, null and void. The said non-est transfer need not required to be obeyed. Thus, the transfer of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is an incidental issue to the main issue of refusal of employment. Thus, the court has every jurisdiction to decide the incidental issue of the validity of the transfer order of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad. Hence, the contention of the Ld. Adv. M. S. Bandodkar that the court has no jurisdiction to

adjudicate the issue of transfer as it amounts to beyond the scope and jurisdiction of this court is without any substance of merit.

46. Ld. Adv. Shri M. S. Bandodkar appearing for the Employer also relied upon following judgments in support of his contention that the transfer of service of the workman is an incident of service and it is just, fair and proper.

47. In the case of **Suresh S. Bhamre and Anr., v/s Devendra Purushottam Shinde, Police Inspector, Nasik and Ors. reported in 2004 (1) LLN 199**, the Hon'ble High Court of Bombay in para 11 of its judgment observed as under:

“With respect, in our opinion, none of the grounds can be said to be germane, relevant or material so far as an action of transfer is concerned. Once it has been held that transfer is an incident of service, such action can be taken. It is immaterial whether an employee has or has not completed one year. Similarly, it is not necessary that such action can be taken only if there is something “against” his performance. Finally, the fact whether those aspects were or were not brought to the notice of the Dy. Chief Minister is all together irrelevant and extraneous. A person might be performing his duties to the satisfaction of the authorities, yet he can be transferred if the post held by him is transferrable”.

48. In the case of **Vidyut Metallics Pvt. Ltd., v/s Maharashtra Rajya Rashtriya Kamgar Karmachari Sangh and Anr., reported in 2008 LLR 701**, the Hon'ble High Court of Bombay in para 4 of its judgment observed as under:

“I have no doubt in my mind that the industrial court misdirected itself. The Employer came out with a case that deputation was to meet the specific challenges in the market and for setting up of a new factory. To depute its employees for such exigencies, it is not necessary to refer to the Standing Orders or appointment orders. In fact it is an inherent power of the Employer to depute its employees to meet such specific exigencies and so long as the said deputation is not being ordered to transfer the employees in the guise of managerial authority, there was no case to interfere with the order of deputation. The Employer came out with a case that the deputation period would not be more than 3 to 4 months. To dispel the fear of the union and its members that the employees deputed once may continue on deputation and thus indirectly get displaced by way of transfer, the Company was called upon to file a specific affidavit and

Mr. Anant Rajadnye, who is the head of the Human Resources department of the Petitioner Company, has filed an affidavit”.

49. In the case of **V.I.P. Industries Ltd., Satara v/s Maharashtra Kamgar Karmachari Sanghatana, Satara and Anr., reported in 2008 III CLR 22**, the Hon'ble High Court of Bombay has held that *“once transferability is a condition of service, and the conditions of service are not being adversely affected by the order of transfer, the action of the Employer in exercising the right to transfer the employee cannot be faulted except for malafides or where there is statutory violation”.*

50. In the case of **K. Thirumalaisamy v/s The Managing Director, Tamil Nadu State Transport Corp. Ltd., reported in 2012 (5) LLN 486**, the Hon'ble High Court of Madras has held that *“transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government servants insist that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires”.*

51. In the case of **H. K. Chawala v/s Indian Oil Corp., reported in 2005 LLR 226**, the Hon'ble High Court of Delhi has held that *“transfer of an employee from one place to another is an incident of service and the courts will not interfere unless it is mala-fide or that there is no such provision in the contract of employment between the employer and the employees or the provisions are violated”.*

52. In the case of **U.P. Singh v/s Punjab National Bank, reported in 2011 LLR 708**, the Hon'ble High Court of Delhi has held that *“transfer of the bank employees, holding transferable post, is an incident of service, hence failure of the employee to comply with the transfer will justify action of the management that he has voluntarily abandoned the job”.*

The aforesaid judgments relied upon by the Ld. Adv. Shri M. S. Bhandodkar appearing for the Employer do not in any way helps to the Employer as this court has no jurisdiction to decide the legality and justifiability, of the action of the management in transferring the services of the workman, in deciding the reference pertaining to the legality and justifiability of the action of the Employer in refusing employment to the workman.

53. On the contrary, Ld. Adv. Shri P. J. Kamat representing the workman relied upon following judgments in support of his contention that an illegal and non-est order need not be obeyed.

54. In the case of **Banarasi Prasad and Ors. v/s Coal India Ltd., reported in 2001 III CLR 85 (86)**, the Hon'ble Calcutta High Court has held that *“unless an employee accepts, an employer cannot shift his employee to another employer and such order if made is illegal, without authority and non-est and non-capable of obeying”.*

55. In the case of **Kundan Sugar Mills v/s Ziaddin and Ors., reported in 1950-77 Vol. 6, Pages 3837**, the Hon'ble Supreme Court of India ruled as under:

“.....Under such circumstances, without more it would not be right to imply any such term between the contracting parties when the idea of starting new factories at different places was not in contemplation. Ordinarily the employees would have agreed only to serve in the factory then in existence and the employer would have employed them only in respect of that factory. The matter does not stop there. In the instance case as we have indicated, the two factories are two distinct entities, situated at different places and, to impart a term conferring a right on the employer to transfer respondents 1 to 4 to a different concern is really to make a new contract between them”.

56. In the case of **Dr. R. C. Tyagi v/s Union of India and Ors. reported in 1994(68) FLR 688**, the Hon'ble Supreme Court of India has held as under:

“.... Further it is necessary to mention that the respondent having taken definite stand in the written statement that the transfer order was approved but did not produce the record in the trial court nor they could substantiate it even in this court, there is no option but to hold that the order was not passed by the persons who alone was competent to do so. The transfer order issued by the Director General, Thus being contrary to rules was non-est in the eyes of law”.

The principles laid down by the Hon'ble Apex Court in its aforesaid judgments is equally applicable to the case in hand. In the present case the workman was transferred at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad in Karnataka State which is altogether a different Company registered under the Companies Act separately. Thus the transfer of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is non-est, illegal and without any authority, in the absence of any tripartite agreement between the Employer Company, M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad and the workman. The issue No. 3 is therefore answered in the affirmative.

57. *Issue No. 2:* I have heard the arguments of Ld. Adv. appearing for the respective parties.

58. Ld. Adv. Shri P. J. Kamat representing the workman during the course of his oral arguments submitted that the Employer Company transferred the services of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad in Karnataka State. He submitted that the said transfer of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is illegal, non-est and need not be obeyed. He submitted that as the workman was refused employment w. e. f. 29-05-2006 on the pretext of illegal and non-est transfer, the said refusal of employment to the workman w. e. f. 29-05-2006 is illegal and unjustified.

59. On the contrary, Ld. Adv. Shri M. S. Bhandodkar representing the Employer during the course of his oral arguments submitted that the Employer Company at no point of time refused employment to the workman w. e. f. 29-05-2006 or thereafter, but transferred the services of the workman at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad and the said transfer is just, fair and legal. He therefore submitted that the question of refusal of employment to the workman w. e. f. 29-05-2006 or thereafter, does not arise.

I have carefully perused the records of the present case including the synopsis of written arguments filed by the Ld. Advocate appearing for respective parties. I have also carefully considered the various oral as well as written submissions made by the Ld. Advocates for the respective parties.

60. While deciding the issue No. 3 hereinabove I have come to the conclusion and held that the transfer of the workman by the Employer Company at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is without any authority, hence it is illegal and non-est. The said transfer order is not required to be obeyed.

61. The evidence on record indicates that the workman protested against his transfer order transferring him at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad and did not join at his place of transfer. The evidence on record further indicates that the workman continued to report to the Employer Company at the establishment of the Employer Company from 27-05-2006 till 28-05-2006 though he was forcibly relieved from on the close of the working hours of 27-05-2006. The evidence on record further indicates that the workman was refused employment with effect from 29-05-2006. The said refusal of employment to the workman

w. e. f. 29-05-2006 by the Employer amounts to termination of services of the workman otherwise than as a punishment inflicted by way of disciplinary action. Hence the said refusal of employment to the workman amounts to retrenchment of services of the workman. The evidence on record indicates that neither one month notice in writing or wages in lieu of notice has been given to the workman nor the workman has been paid retrenchment compensation as provided under sub-section (b) of Section 25-F of the I.D. Act, 1947. In the circumstances, non-compliance of the mandatory provisions of Section 25-F of the I.D. Act, 1947, the termination of services of the workman would become illegal and unjustified. Hence, it is held that the action of the Employer Company in refusing employment to the workman w. e. f. 29-05-2006 is illegal and unjustified. The issue No. 2 is therefore answered in the affirmative.

62. *Issue No. 4:* I have heard the oral arguments of the Ld. Advocates appearing for respective parties.

63. Ld. Adv. Shri P. J. Kamat representing the workman during the course of his oral arguments submitted that the Employer is having its establishment at Bethora, Ponda, Goa. He submitted that the services of the workman were illegally transferred at M/s. Wallace Laboratories Pvt. Ltd., at Belur, Dharwad, w. e. f. 01-06-2006 which is a distinct, separate and independent Company. He submitted that the aforesaid transfer of the workman from the Employer Company to M/s. Wallace Laboratories Pvt. Ltd., at Belur, Dharwad is illegal, void and non-est in the eyes of law as there is no provision for such transfer of an employee without his consent either in the Certified Standing Order of the Employer Company or in the appointment letter issued to the workman. He submitted that since the workman has been refused employment w. e. f. 29-05-2006 on the pretext of alleged illegal transfer from its establishment, the cause of action arose at Bethora, Ponda, Goa, hence the dispute raised by the workman pertaining to his non-employment in the State of Goa. He therefore submitted that the Appropriate Government is the Government of Goa for the purpose of issuing necessary reference and this court has every jurisdiction to adjudicate the present reference under the provisions of the Industrial Disputes Act, 1947. He therefore submitted that the present reference issued by the Government of Goa is just, proper and valid in law.

64. On the contrary, Ld. Adv. Shri M. S. Bhandodkar representing the Employer during the course of his

oral arguments submitted that at no point of time the Employer Company has refused the employment to the workman even on 29-05-2006 or thereafter. He submitted that for the business exigencies and requirements the services of the workman was transferred at Wallace Laboratories Pvt. Ltd., its sister concern at Belur, Dharwad w. e. f. 01-06-2006, thus it is clear case of transfer and not refusal of employment. He further submitted that since the workman was transferred at Dharwad in Karnataka State the appropriate Government to raise any dispute before Authority is Karnataka State and not Goa Government. He submitted that since the workman was transferred, he should have reported at the transferred place and then only ought to have raised the dispute before the Appropriate Authority of the respective State. He therefore submitted that in view of the aforesaid reasons the present reference is bad-in-law, not maintainable and ought to be rejected in limine.

I have carefully perused the records of the present case including the synopsis of written arguments filed by the Ld. Advocate appearing for respective parties. I have also carefully considered the various oral as well as written submissions made by the Ld. Advocates for the respective parties.

65. The Employer by way of preliminary objection submitted that the entire reference is bad in law, not maintainable and ought to be rejected in limine for any of the grounds. The burden to prove the said contention is therefore on the Employer.

66. The Employer Company vide its letter dated 09-05-2006 transferred the services of the workman at M/s. Wallace Laboratories Pvt. Ltd., at Belur, Dharwad from their establishment at Bethora, Ponda-Goa. The workman protested his transfer at M/s. Wallace Laboratories Pvt. Ltd., at Belur, Dharwad on various grounds. The workman did not obey the transfer order dated 09-05-2006 transferring his service at M/s. Wallace Laboratories Pvt. Ltd., at Belur, Dharwad. The workman however continued to report at the Employer's establishment at Bethora, Ponda-Goa, even after relieving him from service. The workman was therefore refused the employment w. e. f. 29-05-2006. Thus, the cause of action of refusal of employment took place at Bethora, Ponda-Goa. The Appropriate Government for the purpose of any industrial dispute between the workman and the Employer Company is the Government of Goa and not the Government of Karnataka where the services of the workman have

been transferred. Hence it is held that the Goa Government has every jurisdiction to refer the present dispute for its adjudication to the Industrial Tribunal of Goa.

67. It is further contention of the Employer that the present dispute cannot be termed as 'industrial dispute' as transfer itself cannot be a dispute. It is pertinent to note that the Government of Goa in its discretion conferred u/s 10(1)(d) of the Industrial Disputes Act, 1947 referred the present reference for its adjudication vide its order dated 23-08-2007. The reference referred by the Government of Goa pertains to the legality and justifiability of the action of the Employer in refusing employment to the workman w. e. f. 29-05-2006 and not pertains to the transfer of the workman. Thus, the dispute raised by the workman against the Employer pertaining to his non-employment w. e. f. 29-05-2006, is an 'industrial dispute' within the meaning of Section 2-K of the I. D. Act, 1947 and as such this court has every jurisdiction to adjudicate the present reference.

68. It is further contention of the Employer that since the workman was transferred, he should have reported at his place of transfer first and then only ought to have raised the dispute before the Appropriate Authority of the respective State. While deciding the issue No. 3 hereinabove I have come to the conclusion and held that the transfer of the workman by the Employer Company at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is not only contrary to rule 21 of the Certified Standing Order of the Employer Company and clause 5 (a) of the appointment letter issued to the workman but also without any authority, hence it is illegal and non-est. The said transfer order is not required to be obeyed.

69. Hence I do not find any merits in any of the submissions of Ld. Adv. Shri M. S. Bhandodkar appearing for the Employer to hold that the entire reference is bad-in-law, not maintainable and ought to be rejected in limine. Hence it is held that the Employer failed to prove that the entire reference is bad-in-law, not maintainable and ought to be rejected in limine for any of the grounds raised by them in its written statement by way of preliminary objections. The issue No. 4 is therefore answered in the negative.

70. *Issue No. 5:* I have carefully perused the records of the present case including the synopsis of written arguments filed by the Ld. Advocate appearing for respective parties. I have also carefully considered the various oral as well as written submissions made by the Ld. Advocates for the respective parties.

71. While deciding the issue No. 2 herein above I have already come to the conclusion and held that the refusal of employment to the workman w. e. f. 29-05-2006 is illegal and unjustified. Similarly while deciding the issue No. 3 herein above I have already come to the conclusion and held that the transfer order dated 9-05-2006 issued to the workman, thereby transferring his service at M/s. Wallace Laboratories Pvt. Ltd., Belur, Dharwad is non-est in the eyes of law.

72. **In the case of Kendriya Vidyalaya Sangathan and Anr. v/s S. C. Sharma, reported in 2005(104) FLR 863**, the Hon'ble Apex Court in para-15 of its aforesaid Judgment has ruled as under:

"15..... When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places material in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

73. In the case of **Jindarsing Bahra and anr. v/s Cargo Motors Ltd., reported in 2006 LLR pg 1105**, the Hon'ble High Court of Gujrat has held that *"Labour Court was right in declining to award back wages when the workmen have not deposed about their unemployment during intervening period as such interference of the High Court is not warranted. The burden to prove unemployment, is initially upon the workman which can be by way of oral evidence before the Labour Court, and thereafter, such burden stands shifted upon the employer to controvert the oral evidence of the workman about his unemployment during the intervening period, hence the Labour Court was right in rejecting the claim of the workman for back wages of intervening period"*.

74. In the case of **Jagbir Singh v/s Haryana State Agriculture Marketing Board and Anr., reported in 2009 III CLR pg 628**, the Hon'ble Supreme Court of India it has held that *"it is true that earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the*

termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice".

Thus, it is now well settled that even if the termination of services of the workman is held to be illegal and unjustified, the workman concerned is not entitled to re-instatement with full back wages and continuity in service and consequential benefits, but it depends upon the facts and circumstances of each case.

75. In the case in hand, the workman was in the employment of the Employer Company continuously w. e. f. 01-12-1995 till refusal of employment to him w. e. f. 29-05-2006. Evidence on record indicates that the workman has denied certain allegations made against him vide letters of the Employer. The Employer has however failed to investigate the said allegations made against the workman by holding an enquiry. Hence, the allegations made against the workman did not stand prove. Even otherwise the transfer order issued to the workman transferring his services has been held to be non-est and ab-initio void. Hence, the workman is entitled to be reinstated in the service of the Employer Company along with continuity in service and consequential benefits.

76. The workman pleaded and also proved that he is unemployed from the date of his refusal of employment. Thus, the burden to prove that the workman was gainfully employed since after the termination of his service till date shifts on the Employer. The Employer has however failed to place on record any material evidence to show that the workman was gainfully employed during the interregnum period. Hence it is held that the workman was gainfully unemployed during the interregnum period. Thus taking into consideration nature of employment of the workman, he is entitled to 50% of back wages.

77. In view of above, I proceed to pass the following order:

ORDER

1. It is held that the action of the management M/s. Wallace Pharmaceuticals Pvt. Ltd., Panaji, Goa, in refusing employment to Shri Leslie Fernandes, Driver w. e. f. 29-05-2006 is illegal and unjustified.
2. The workman Shri Leslie Fernandes is ordered to be reinstated in the service of the Employer along with 50% back wages, continuity in service and consequential benefits arising there from.

3. No order as to costs.
4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2014-Lab/154

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 21-01-2014 in reference No. IT/25/2011 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor
of Goa.

Shashank V. Thakur, Under Secretary (Labour).
Porvorim, 24th February, 2014.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

**(Before Ms. Bimba K. Thaly, Presiding
Officer)**

Ref. No. IT/25/2011

Shri Ulhas V. X. Chati,
H. No. 1251/A, Carona, Aldona,
Bardez, Goa. Workman/Party I
V/s

The Managing Director,
The Goa State Co-operative Bank Limited,
EDC Complex, Patto Plaza,
Panaji, Goa. Employer/Party II
Workman/Party I represented by Shri Subhash
Naik.

Employer/Party II represented by Adv. Shri M. H.
Govekar.

AWARD

(Passed on this 21st day of January, 2014)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), (for short 'The Act'), the Government of Goa by order dated 9-8-2011 bearing No. 28/19/2011-LAB, has referred the following dispute for adjudication.

“(1) Whether the action of the management of M/s. Goa State Co-operative Bank Limited, Panaji, Goa, in dismissing Shri Ulhas V. X. Chatis, clerk/typist, with effect from 23-06-2010, is legal and justified?

(2) If not, what relief the Workman is entitled to?”

2. Upon receipt of the reference, IT/25/11 was registered and registered AD notices were issued to both the parties. Upon appearance, Party I filed the claim statement at Exb. 5, Party II filed the written statement at Exb. 6 and thereafter the Party I filed the rejoinder at Exb. 8.

3. In the statement of claim it is in short the case of Party I that the Workman/Party I was employed in Goa State Co-operative Bank Limited as a clerk/typist w. e. f. 14-9-1992. That at the time of termination he was employed at Head Office of the Bank at Panaji, Goa. That he was issued show cause notice dated 15-7-08 alleging certain acts of misconduct which he replied by reply dated 17-7-08. That he was then issued charge-sheet dated 19-8-08 which he replied by reply dated 8-10-08. That the enquiry was conducted in respect of the charges levelled against Party I stating that Party II was not satisfied with the reply of Party I. After completion of enquiry, the Enquiry Officer submitted report holding Party I guilty of the charges levelled against him, by his report dated 14-3-09. That thereafter in his reply to the show cause Party I stated that the findings given by the Enquiry Officer are perverse, vague and not true and that no punishment be imposed. That thereafter Party II issued order dated 16-5-09 suspending Party I from service with immediate effect and directing him to appear before the Medical Board. After Party I appeared before the Medical Board, a certificate was issued to him holding that he was medically fit to resume the duty. That thereafter Party II issued office order dated 23-6-10 dismissing Party I from service with immediate effect totally ignoring that earlier by office order dated 16-5-09 he was suspended from service pending examination by Medical Board and ignoring the fact that the Medical Board had issued certificate holding Party I fit to resume duty. Being aggrieved with the action of Party II, Party I raise industrial dispute demanding reinstatement in service with full back wages and continuity of service but the conciliation proceedings ended in failure. Hence the claim praying to reinstate Party I in service with full back wages and continuity of service with costs.

4. In the written statement, Party II has raised objection such as that the appropriate Govt. for referring the dispute to this Tribunal is the Central Govt. and not the State Government. It is stated that Party I has been dismissed from service by the Disciplinary Authority of the Goa State Co-operative Bank by an order dated 23-6-10 and that this Court cannot sit in judgment over the decision of Disciplinary Authority and act as a Court of Appeal therein. Party II has otherwise denied the case setup by Party I in the claim statement. It is stated that before passing the order of dismissal against Party I, the Disciplinary Authority was of the view to put the Party I under medical checkup by Medical Board at GMC, Bambolim, to obtain a medical opinion on the soundness of the mind of the Party I and merely to ascertain whether Party I was medically fit to perform his office duties and the cause behind such grave irregularities/negligence committed by Party I. It is stated that due to this reason the Disciplinary Authority postponed the order of dismissal for the time being and placed the delinquent under suspension till they receive the medical report from the GMC, Bambolim, Goa. It is stated that with the aforesaid order of suspension, no prejudice has been caused to Party I and that during the suspension period Party I has been paid subsistence allowance till the order of dismissal is passed against him. Thus amongst above and other grounds Party II has prayed to dismiss the claim of Party I.

5. On the basis of the above pleadings issues dated 3-9-12 at Exb. 10 and additional issues dated 21-02-13 at Exb. 12 reading as under were framed.

1. Whether Workman/Party I proves that his dismissal from service by Party II vide order dated 23-6-10 is illegal and unjustified?
2. Whether Party II proves that the appropriate Government for referring the dispute to this Tribunal is the Central Government and not the State Government and therefore the present reference is not maintainable?
3. What relief? What Award?
4. Whether the Workman/Party I proves that the domestic enquiry held against him is not fair and proper?
5. Whether the charges of misconduct levelled against the Workman/Party I are proved to the satisfaction of the Tribunal by acceptable evidence?

6. At the request of both the parties, issue No. 2 was treated as preliminary issue and by order dated 01-02-2013 the same was answered in the negative, after hearing both the parties. The matter was thereafter posted for evidence.

7. In the course of further proceedings both the parties filed settlement terms dated 21-1-14, at Exb.13 requesting for an award in the said terms. The said settlement terms are as under:

1. That in the present matter it is agreed between the parties to settle the dispute amicably by reinstating the Party I in the services of the Party II in continuity of his employment.
2. The Party No. I agreed that he shall not claim any back wages and/or any previous benefits from the date of termination, from the Party No. II. The Party No. II will issue appropriate letter to the Party No. I reinstating him immediately after settlement and disposal of present reference.
3. The Party No. I, Shri Ulhas V. X. Chati state that he is having no claim of whatsoever nature which can be computed in terms of money against the Party II/Employer and that he does not wish to pursue to the present reference and treat the said reference as settled in view of compliance of Clause No. 1 and 2 above.

8. The above terms are signed by Party No. 1 and his representative Shri Subhash Naik George so also Party No. II and their Adv. Shri M. H. Govekar.

9. I have gone through the terms of the settlement and I am satisfied that the terms of settlement are certainly in the interest of Workman. I, therefore, accept the said terms and pass the following:

ORDER

1. The reference stands disposed off by consent award in view of the settlement terms filed by the parties at Exb. 13.

2. No order as to costs.

Inform the Government accordingly.

Sd/-
(Bimba K. Thaly)
Presiding Officer
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/1/2014-Lab/224

The following award passed by the Industrial Tribunal and Labour Court at Panaji-Goa on 13-01-2014 in reference No. IT/63/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 8th April, 2014.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

**(Before Ms. Bimba K. Thaly, Presiding
Officer)**

Ref. No. IT/63/2002

Workmen rep. by
Gomantak Mazdoor Sangh,
Shetye Sankul,
3rd Floor, Tisk,
Ponda-Goa

..... Workmen/Party I

V/s

M/s. Hotel Mandovi,
Panaji-Goa

..... Employer/Party II

Workmen/Party I represented by Shri P. Gaonkar.
Employer/Party II represented by Adv. Shri G. B. Kamat.

AWARD

(Passed on 13th day of January, 2014)

By order dated 4-10-02, bearing No. 28/37/2002-LAB, the Government of Goa in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (for short The Act), has referred the following dispute to this Tribunal for adjudication.

“(1) Whether the action of the management of M/s. Hotel Mandovi, Panaji, Goa, in terminating the services of the following Workmen with effect from 20-9-2001, is legal and justified?

(1) Shri Purshottam M. Gawade, Helper.

(2) Shri Purshottam A. Gawade, Helper.

(3) Shri Prakash Nagvenkar, Maintenance Helper.

(4) Shri Prasad Sawal, Waiter.

(2) If not, what relief the workmen are entitled to?”

2. Upon receipt of the dispute the same was registered as Ref No. IT/63/02 and registered A/D notices were issued to both the parties. Party I filed the claim statement at Exb. 3 and Party II filed the written statement at Exb. 5. Party I then filed the rejoinder at Exb. 6.

3. It is in short the case of Party I that the workmen in this reference were in continuous service with Party II since their date of joining and they were carrying out duties of skilled, semi-skilled and unskilled manual work in the hotel. It is stated that they were entitled for service charges as applicable, every month which formed part of wages as per the terms of the settlement. It is stated that on 20-9-01 when these workmen went to report for duties, they were not allowed to resume the duty and were informed that their services were terminated. Upon this, the workmen represented before the management but no response was received from Party II and hence they raised the dispute through their Union. It is stated that before termination of their services, no enquiry was conducted and therefore the principles of natural justice were not followed. It is stated that during the discussions before Addl. Labour Commissioner, Panaji, the matter ended in failure. It is stated that Party II did not obtain permission of the Appropriate Government in terms of chapter VB of the Act before termination of the services, as Party II is employing more than 100 workers on an average for preceding 12 months. It is stated that Party II did not offer the retrenchment compensation, notice pay in accordance with the provisions of the Act and thus violated section 25F of the Act. It is stated that the workmen after termination of their services are unemployed and that Party II has employed new workmen in their place of work. Party I has therefore prayed to declare the termination of above Workmen as illegal, improper and unjustified and to direct Party II to reinstate them with full back wages and continuity of services.

4. In the written statement, Party II has denied the case set up by Party I and has stated that the union has no locus standi to sponsor the dispute so as to invest it with the status of an industrial dispute. It is stated that all the workmen in this reference were working as temporary employees

and their engagements were renewed from time to time. It is stated that the said employees were not the members of Gomantak Mazdoor Sangh. It is stated that on account of stiff competition in the hotel business and reduction in the tourist flow, the hotel establishment had been severely affected and therefore the employer decided to re-organize the working of the hotel establishment in or about July-August, 2001. It is stated that the charter of demands served by the union were settled pursuant to the negotiations and a memorandum of settlement was arrived as by and between the parties on 9-8-2001, during which time Party II made clear their decision of re-organizing the working of the hotel establishment and consequent retrenchment of their surplus workmen. It is stated that pursuant to discussions between the parties, Party II introduced a Voluntary Separation Scheme in respect of permanent employees of Party II in which total 95 workmen opted for the scheme. It is stated that as Party II introduced the above scheme in respect of the permanent employees, it was decided to dispense with the services of the temporary employees working in the establishment, in the first instance and accordingly the services of the workmen in the present reference were orally terminated on 20-9-01 w.e.f. 1-10-01. It is stated that the said workmen were unconditionally offered/tendered their final settlement dues in cash consisting of notice pay, retrenchment compensation, wages till 30-9-01 and other dues. It is stated that each of the said workmen refused to accept the same, even under protest. It is further the case of Party II that as the dues were refused by the workmen the same were then sent under crossed cheque by registered post with A/D but the workmen refused to accept the said letter and the envelope was returned to the employer as unclaimed. It is stated that the employer thereafter by opening the envelope, sent the cheque/s again to each of the workmen concerned but they refused to accept the same on the said occasion. It is also the defence of Party II that the plea taken by Party I regarding applicability of chapter VB of the Act to these proceedings to show that the termination of the workmen was illegal were not raised during the conciliation proceedings before the conciliation officer and such plea now taken being beyond the terms of reference, cannot be the subject matter of adjudication. Thus, amongst above and other defences, Party II has prayed to reject the reference.

5. In the rejoinder Party I has denied the contentions raised by Party II in the written

statement and has asserted their case projected through the claim statement.

6. In view of the averments of the respective parties, issues dated 6-2-03 at Exb.7 were framed.

7. During evidence Shri Puti Gaonkar examined himself as witness 1 and Shri Prasad Sawal was examined as witness 2, for Party I. On the other hand Party II examined Shri Shrikant Bhatikar as their witness and closed the case.

8. Heard Shri P. Gaonkar for Party I and Adv. Shri G. B. Kamat for Party II.

9. I have gone through the records of the case and have duly considered the arguments advanced. I am reproducing herewith the issues along with their findings and reasons thereof:

Sr. No.	Issues	Findings
1	2	3
1.	Whether the Party I/Union proves that it has the authority to espouse the dispute of the workmen and represent them in the reference?	In the positive
2.	Whether the Party I/Union proves that Party II terminated the services of the workmen w.e.f. 20-9-2001 without complying with the provisions of Chapter V-B and Sec. 25F of the I.D. Act, 1947?	In the negative
3.	Whether the Party I/Union proves that action of the Party II in terminating the services of the workmen w.e.f. 20-9-2001 is illegal and unjustified?	In the negative
4.	Whether Party I/Union proves that the Party II has employed new workers in their place after termination of their services?	In the negative
5.	Whether the workmen are entitled to any relief?	In the negative
6.	What Award?	As per the order below

REASONS

10. *Issue No. 1:* In their written statement Party II has challenged the locus standi/authority of the Party I union to espouse the dispute of the

workmen and represent them in the reference and it is in this context, issue No. 1 herein has been framed. In his evidence Shri P. Gaonkar, as the General Secretary of Gomantak Mazdoor Sangh (GMS for short) has stated that in the first week of April 2001 all the workers of Party II joined GMS and thereafter by letter dated 4-4-01 the union informed the management that all the workers have joined the union. Shri P. Gaonkar has produced the copy of the said letter dated 4-4-01 at Exb.W1. He has also produced the copy of letter dated 1-10-01 written by him to the Labour Commissioner raising the dispute on behalf of the workmen in this reference at Exb. W2. In his cross-examination, it is merely suggested to Shri P. Gaonkar that GMS has no authority to espouse the dispute on behalf of the workmen in the present case and that the workmen in this reference are not the members of GMS. It is pertinent to note that no challenge is thrown to Exb. W1 and Exb.W2 while cross examining Shri P. Gaonkar and even for that matter nothing has been suggested to Shri Prasad Sawal stating that he was not a member of GMS and this is because Shri Prasad Sawal has categorically stated in his chief examination that all the workmen of Party II including him had become the members of GMS. More so in his arguments Ld. advocate for Party II made it clear that Party II does not seriously dispute this issue. This being the situation, I have every reason to hold that Party I has proved this issue.

Hence my findings.

11. Issues No. 2 and 3: Both these issues are answered together for sake of convenience, being interconnected. In the claim statement, it is the precise case of Party I that the workers to this reference were in continuous service of Party II since their joining Party II; that they were not allowed to report for the duties on 20-9-01 and were informed that their services were terminated. It is also the averment in the claim statement that before termination of their services, no enquiry was conducted and therefore the principles of natural justice were not followed. It is further the averment in the claim statement that, Party II did not comply with the provisions of chapter VB of the Act at the time of termination of the services of the workmen, as Party II was employing more than 100 workers on an average for preceding twelve months and that it did not offer the retrenchment compensation, notice pay in accordance with the provisions of the act and therefore violated Sec. 25-F of the Act. Thus, it is on the basis of above averments in the claim statement, these issues have been framed.

12. In his evidence Shri P. Gaonkar has stated that Party II terminated the services of Party I without complying with the provisions of law and that at the relevant time Party II was employing more than 130 workmen and therefore was covered by chapter VB of the Act. In his cross examination the suggestions that Party II terminated the services of the workmen on 20-9-01 after complying with the provisions of law so also that Party II is not covered by chapter V-B of the Act are denied by Shri P. Gaonkar.

13. Shri Prasad Sawal has stated that he joined the services of Party II from 24-10-96 and has produced the copy of his appointment letter dated 23-7-98 issued by Party II at Exb. W3. He has stated that he worked with Party II continuously from the date of joining the services till the date of termination of his services. He has stated that at the time of termination of his services he was not given one months notice nor was paid retrenchment compensation or notice pay. In his cross-examination, he has admitted that on 20-9-01 he was offered an amount of Rs. 15,073.70 but he did not accept the same. Upon being shown copy of letter dated 24-9-01 this witness has admitted of having received the same from Party II, which was sent by registered post. The copy of this letter and AD card are marked as Exb. E 1 colly. This witness has further admitted that along with Exb. E 1 colly he had received a cheque dated 20-9-2001 for Rs. 15073.70 and has made it clear that he did not encash the said cheque and returned the same to Party II by registered post. Upon being shown the cheque dated 20-9-01 and the full and final settlement account this witness has admitted of having returned it back to Party II and the same as marked as Exb. E 2 colly.

14. Shri Shrikant Bhatikar has stated that after orally terminating the services of the workmen in this reference along with two other workmen namely Shri Elvis Benedict D'Cunha and Shri Ambaji Dalvi on 20-9-01 with effect from 1-10-01, each of them were unconditionally offered final settlement dues in cash consisting of notice pay, retrenchment compensation, wages till 30-9-01 and other dues on the said date i.e. 20-9-01 and that each of the workmen refused to accept the same even under protest and that none of them reported for duties on and from 21-9-01. He has stated that thereafter the dues were sent under the crossed cheques under registered post AD along with the covering letter dated 24-9-01 but each of the said workmen refused to accept the same. He has stated that thereafter after opening the envelopes cheques were again sent to each of

the workmen by registered post AD under covering letter dated 16-10-01 but the workmen refused to accept the same. He has produced letter dated 24-09-01 addressed to Purushottam M. Gaude alongwith postal slip, detail statement and cross cheque dated 20-9-01 at Exb. 18-colly, letter dated 24-9-01 addressed to Purushottam O. Gaude, postal slip and detail statement at Exb. 19-colly, letter dated 24-9-01 addressed to Prakash Nagvekar, postal slip and detail statement at Exb. 20 colly, letter dated 16-10-01 addressed to Purshottam Gaude, postal slip and AD card at Exb. 21-colly, letter dated 16-10-01 addressed to Purushottam O. Gaude, postal slip and AD card at Exb. 22-colly, letter dated 16-10-01 addressed to Prakash Nagvekar along with postal slip at Exb. 23-colly and unclaimed envelope containing notice along with AD card addressed to Prakash Nagvekar. In his cross-examination he has denied the suggestion that the employees in this reference were retrenched in order to pressurize the permanent workers who had adopted for VRS. He has also denied the suggestion that the management wanted to withdraw the service charges of the permanent employees to which the permanent employees were not agreeable and with this the management had merged service charges into the salary so as to ensure that the benefit of service charge was not available to the new employees. He has however made it clear that the management had discontinued charging the guests, 10% of the sales and service charges and consequently the employees were also not paid service charges of 10% but were paid a fixed amount of Rs.1,150/- and that only the employees to this reference who were getting service charges. He has denied the suggestion that the services of the employees to this reference were retrenched as the management did not want to pay them service charges and to avoid regularization. He has also denied the suggestion that the services of the employees to this reference were terminated as they were demanding confirmation of their services. According to him the services of Party I were orally terminated on 20-9-01 w. e. f. 1-10-01. He has admitted that service charges of Rs. 1,150/- were not included in the retrenchment compensation and according to him the same were not so included as they did not form part of wages.

15. In his arguments Shri P. Gaonkar submitted that there is no compliance of Section 25-F of the Act as Party I workers did not accept the retrenchment compensation offered to them. He stated that the retrenchment compensation offered

did not include service charges which formed part of the wages. He relied on the judgment in the case of **Rattan Singh v/s Union of India and Anr. LLJ 1993 Vol. 3 714** in which it is held that workman who has continuously work for more 240 days in a year is entitled to protection under section 25-F and it cannot be denied on the ground that he was daily rated worker. He also relied on the judgment in the case of **Bhogpur Co-operative Sugar Mills Ltd. v/s Harmesh Kumar 2007 LLR, 183** in which it is observed that u/s 25-F of the Act payment of retrenchment compensation and one months notice pay in lieu of notice has to be paid by the employer at the time of termination.

16. It deserves to be noted that Shri P. Gaonkar has except for saying that Party II has not complied with the provisions of law while terminating the services of Party I, has not stated in detail as to in what manner the provisions of law have been violated by Party II. This is because, Shri Prasad Sawal has stated in his chief examination that at the time of termination of services, he was not given one months notice nor was paid retrenchment compensation or notice pay but in his cross examination he has admitted that on 20-9-01 he was offered an amount of Rs. 15,073.70 but he did not accept the same. It is also apparent from Exb. E 1-colly, Exb. 18-colly, Exb.19-colly and Exb. 20-colly that Party II had offered notice pay and retrenchment compensation to those respective workers on the same day and as they did not accept it, sent letters to them enclosing cheques of respective amounts towards full and final settlement of their dues along with detail statement but the same too were not accepted by Party I workers. Further, it is clear from Exb. 25-colly that such letter, cheque towards full and final settlement of dues and details statement sent to Prakash Nagvekar was also returned unclaimed. It is pertinent to note that the amount mentioned in the respective cheques tally with the one found on the letters on which calculation of dues towards full and final settlement is mentioned, thereby indicating that the retrenchment compensation and notice pay was offered to the workmen on 20-9-01 itself, on which date their services were terminated w. e. f. 1-10-01. It deserves to be noted that Party II had offered salary for the entire month of September, 2001 though the services of the workmen were orally terminated on 20-9-01 w. e. f. 1-10-01.

17. In the above context Id. Advocate for Party II relied on the judgment in the case of **Delhi Transport Undertaking v/s Industrial Tribunal, Delhi and Anr. 1965 (1) LLJ 458**, the observations

in which indicate that it is not required that the wages of one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. No doubt, the above observations have been made in an application for approval filed by the Appellant u/s 33 (2) (b) of the Act wherein the Industrial Tribunal had refused to grant approval amongst others on the ground that one months wages were not paid or tendered prior to the order of the dismissal of the employee becoming effective. It is observed that in this case, the tender was definitely made prior to the order of dismissal became effective and the wages would certainly have been paid if the workmen had asked for them. Thus, in the above situation it is observed that there was no failure to comply with the provisions in this respect. He also relied on the judgment in the case of **Laxman Ramchandra Mai v/s Executive Engineer, Irrigation Department, Sangli 2000 (4) L.L.N. 769** in which it is observed that when the employer tenders the amount of retrenchment compensation to the employee and the employee does not accept the same, he then cannot contest that his retrenchment is in violation of Section 25-F of the Act. In my view, the principles culled out in the above cases are obviously applicable to the fact situation in the instant case and therefore it would not be proper and justified to say that notice pay or retrenchment compensation was not offered to Party I.

18. Thus, the fact that remains is that notice pay and retrenchment compensation was offered to Party I workers at the time of termination of their services but they refused to accept the same and hence now they cannot claim violation of Section 25-F of the Act on the above count. It also becomes clear from the above discussion that the statement made by Shri Prasad Sawal in his chief examination that he was not paid retrenchment compensation or notice, is apparently an incorrect statement. Consequently, the observations in the judgment in the case of **Rattan Singh** and in the case of **Bhogpur Co-op. Sugar Mills Ltd.** (both cited supra) are not applicable to the situation in the instant case.

19. It may be mentioned here that Party I has not precisely pleaded in the claim statement that Party I workers were paid retrenchment compensation but the same was not as per the requirement of Section 25-F of the Act or that the amount tendered was not calculated correctly. Nonetheless, in his arguments Shri P. Gaonkar

submitted that service charges paid to Party I workers formed the part of their wages and while calculating the retrenchment compensation, Party II has not included the amount towards service charges in the retrenchment compensation. To my mind, the above submission made by Shri P. Gaonkar is infact dehors the case set up in the claim statement as also the statements made by Shri Prasad Sawal in his chief examination. Thus, the same cannot be considered. Even for that matter, in his cross examination Shri Shrikant Bhatikar has made it clear that service charges do not form part of wages and hence were not included in the retrenchment compensation. He has also stated that even the notice pay did not include the service charges. It is worthwhile noting that no any suggestion has been put to Shri Shrikant Bhatikar stating that Party I workers did not accept the retrenchment compensation/notice pay because the same was not inclusive of the service charges. Being so, the schedule to the reference which requires this court to adjudicate as to whether the action of Party II in terminating the services of workers whose names are mentioned therein is legal and justified, cannot be read to mean that the legality and justification of termination is challenged because the retrenchment compensation was not correctly paid but the same has to be read to mean that it has been challenged as no such compensation was at all paid to Party I workmen. This is also because even in the letters at Exb. E-W 4 and Exb. 24-colly all dated 1-10-01, by Shri Prasad Sawal, Shri Purushottam M. Gaude and Shri Purushottam O. Gaude to Party II requesting for their reinstatement, there is no mention that the retrenchment compensation was not correctly paid to them.

20. Ld. Advocate for Party II by inviting my attention to the appointment letters of Shri Prasad Sawal, Shri Purushottam M. Gaude and Shri Purushottam O. Gaude at Exb. W3 and Exb. 30 colly respectively, submitted that there is nothing in these letters about service charges forming part of salary. He also relied on judgment in the case of **M/s. Quality Inn Southern Star v/s The Regional Director, Employees State Insurance Corporation 2008 LAB I.C. 420**, in which it is observed that service charges collected by the hotel management from the customers are not in the nature of wages within the meaning of Section 2(22) of the Employees State Insurance Act.

21. Ld. Advocate for Party II also invited my attention to clause 10 of settlement dated 9-8-01 (Exb. 27) between Party II and all the confirmed/

/permanent workers of Party II so also to the minutes of the meeting held on 9-8-01 (Exb.29) and submitted that as per clause 8 in Exb. 27, the service charges were levied as a substitute for tips and in agreement with parties to this settlement, the workers were to receive such tips/ /service charges/tips allowance @ Rs.1150/-p.m. and this amount is to be paid on 17th of the succeeding month. He also stated that in terms of said clause 8, the above amount cannot be computed for the purpose of payment of bonus or for any other purpose and that Party I has not produced any evidence to indicate as to for what other purpose other than bonus the said amount was to be computed. Thus, according to him service charges cannot form part of wages. By referring to minutes of meeting dated 9-8-01 (Exb. 29), he stated that the dues to be paid to workers who were found surplus or who opted for severance of employer-employee relationship also did not include service charges and even for this reason, the service charges cannot form part of the wages.

22. On the other hand Shri P. Gaonkar stated that the observations in the judgment in the case of **M/s. Quality Inn (supra)** are not applicable to the instant case since the same are made in relation to ESI Act and not I. D. Act. By inviting my attention to Section 2 (rr) (iv) of the I.D. Act, he stated that service charges is the commission payable on the promotion of sales or business of the hotel and thus form part of wages. Hence, according to him amount towards service charges ought to have formed part of wages and should have been included in the retrenchment compensation. He also stated that settlement at Exb. 27 relates only to the permanent workers and therefore clauses in the same cannot be made applicable to the Party I workers who are temporary workers.

23. Undoubtedly, the settlement at Exb. 27 relates to permanent workers of Party II and therefore strictly speaking clauses in the same would not bind Party I workers. Nonetheless, in para 6 of the claim statement Party I workers themselves have pleaded that they were entitled for service charges as applicable every month, which form part of wages, as per the terms of settlement. Thus, the above pleadings make it clear that Party I workers bind themselves to the settlement at Exb. 27 as it is pursuant to this settlement they claim that the service charges form part of wages. It is also seen that as per clause 8 of Exb. 27, service charges of Rs.1,150/-p.m. are to be paid on 17th of succeeding month.

It has been pointed out by Ld. Advocate for Party II that u/s 5 of Payment of Wages Act the wages are required to be paid before expiry of seventh day and in case service charges formed part of wages, the workers who are parties to Exb. 27 would not agree for payment of service charges on 17th of succeeding month, This being the case, in my view, the service charges cannot form part of the wages. Even otherwise, no documentary evidence has been produced by Party I workmen to prove that service charges form part of the wages. Also, there is nothing in the appointment letters of the workmen at Exb. W-3 and Exb. 30 colly that service charges would also form part of wages. That apart, as pointed out by the learned advocate for Party II, even in the minutes of the meeting dated 9-8-01 (Exb. 29) there is no mention of service charges.

24. Though the judgment in the case of **M/s. Quality Inn (Supra)** is in relation to ESI Act but it is seen that the observations in the judgment in the case of **The Rambagh Palace Hotel, Jaipur v/s The Rajasthan Hotel Workers Union, Jaipur (1976) 4 SCC 817** which is in relation to I.D. Act and in which management had sought depression in dearness allowance, have been considered in this judgment, wherein it is observed as under:

"..... It is well known that in important hotels in the country-the appellant is now a five star hotel-the customers are of affluent variety and pay tips either to the waiters directly or in the shape of service charges or otherwise to the management along with the bill for the items consumed. In short, the true character of tips cannot be treated as any payment made by the management out of its pocket but a transfer of what is collected to the staff as it is intended by the payer to be so distributed. It may also happen that more money comes in by way of tips into the pockets of the management than distributed by it. We cannot therefore consider the receipt of tips by the staff as anything like a payment made by the management to its employees warranting consideration by the tribunal to depress the award of dearness allowance ..."

25. Thus, it is clear from the above observations that the service charges paid to the employees is not the payment made by the employer to the employee and even for this reason, the same cannot form part of wages. Consequently the arguments advanced by Shri P. Gaonkar that the retrenchment compensation was not calculated as required u/s. 25-F of the Act, cannot stand.

26. Shri P. Gaonkar invited my attention to the cross examination of Shri Shrikant Bhatikar wherein he has stated about 125 workers are presently employed with Party II and there were approximately 125 permanent workers in the year 2001. By referring to the above statement Shri P. Gaonkar stated that it is clear that at the relevant time Party II had employed more than 100 workers and hence provision of chapter V-B of I.D. Act apply and as no permission is obtained by Party II from the Appropriate Government at the time of termination of their services, the said termination is illegal. However, Id. advocate for Party II by relying on the observations in the judgment in the case of **Lal Bavta Hotel Aur Bakery Mazdoor Union v/s Ritz Private Ltd. and Anr. 2007(3) ALL MR 74** contended that hotel not being a factory as defined u/s 2(m) of Factories Act, it would not be an industrial establishment for the purposes of chapter V-B of the Industrial Disputes Act. Thus, in the light of above legal position it is clear that chapter V-B of the Act is not applicable to the hotels i.e. Party II and hence the question of Party II seeking permission from the Appropriate Government does not arise.

27. Even otherwise, it is noted that no convincing evidence is produced by Party I to contend that at the relevant time Party II was employing more than 100 workers and what appears is that Party I is solely relying upon the statement to that effect brought on record in the cross examination of Shri Shrikant Bhatikar, the bare perusal of which statement does not indicate as to in what context the same has been made. Thus, Party I cannot be allowed to take advantage of such statement made by Shri Shrikant Bhatikar in his cross examination as no direct suggestion that at the relevant time Party II was employing more than 100 workers and hence the provisions of chapter V-B were applicable to it and therefore termination without seeking permission from the Appropriate Government was illegal, has been put to Shri Shrikant Bhatikar and also because Party I has not adduced any direct evidence on this subject. Even otherwise, as rightly pointed out by the Id. advocate for Party II, no plea on the subject of Chapter V-B was raised before the conciliation officer and hence it is not open to Party I to raise the same in this reference.

28. It is also one of the arguments of Shri P. Gaonkar that Party II was not paying minimum wages to Party I workers. He relied on the judgment in the case of **Delhi State Civil Supplies Corporation Ltd. v/s Sh. Bishan Lal and Ors. 2005 LLR 1111** to contend that the minimum

wages are to be paid as per government notification. It is however seen that no such case is set up in the claim statement nor the terms of reference relate to the said subject matter. Even no statement on the above subject matter is made by Shri P. Gaonkar or by Shri Prasad Sawal in their evidence though in his cross-examination Shri Shrikant Bhatikar has admitted that Party II is required to pay wages as per minimum wages. Nonetheless, it is not suggested to Shri Shrikant Bhatikar that Party II was not paying minimum wages to Party I workers. Thus, strictly speaking this court cannot go into above aspect of matter as doing so would amount to enlarging the scope of the reference.

29. Nevertheless, in his arguments Shri. P. Gaonkar produced notification by Department of Labour published in the Official Gazette dated 21-9-2000, fixing rates of minimum wages in respect of scheduled employment namely "Employment in any commercial or industrial establishment engaged in commercial, manufacturing and service activities other than that covered under any of the other entries in the schedule" and stated that Party II has been paying less than the minimum wages notified.

30. On the other hand Id. advocate for Party II by producing notification on the subject of minimum rates of wages payable to various categories of employees employed in "Employment in any residential hotel, restaurant or eating house" published in the Official Gazette dated 29-10-98 (applicable at the relevant time) stated that Party II has been paying minimum wages as required. No doubt, Shri P. Gaonkar tried to contend that notification dated 20-10-98 is specific and the one produced by him dated 21-9-2000 is general and hence is applicable but I find no force in such arguments because notification dated 21-9-2000 apparently applies only to those employments which are not covered under any of the other entries contained in the schedule and undoubtedly the 'employment in any residential hotel, restaurant or eating house' is covered in the schedule. Thus, the arguments advanced by Shri P. Gaonkar on the subject of non-payment of minimum wages by Party II, do not merit consideration. Consequently, the observations in the judgment in the case of **Delhi State (supra)** cannot be imported in the instant case.

31. Shri P. Gaonkar also urged that retrenchment is introduced by Party II to prohibit Party I workers from claiming permanency. It is seen that in the cross examination of Shri Shrikant Bhatikar it is suggested that Party I workers were retrenched

in order to pressurize the permanent workers who had adopted for VRS; that the services of Party I workers were retrenched as the management did not want to pay to them service charges and to avoid regularization and that also that their services were terminated as they were demanding confirmation of their services. But as rightly pointed out by ld. advocate for Party II, the above case tried to be projected through the cross-examination of employers witness, cannot be looked into for want of such averments in the claim statement. Being so, I find no reason to elaborate on the above subject matter.

32. At any rate as the above discussion makes it clear that Party I has failed to prove that Party II terminated the services of the workmen on 20-9-01 with effect from 1-10-01 without complying with the provisions of Chapter V-B and Section 25-F of the Act, so also that the termination is illegal and unjustified, these issues are answered in the negative.

33. *Issue No. 4:* It is averred in the claim statement that after termination of services of Party I workers, Party II employed new workers in their place and Party I workers were not allowed to resume duty. In reply, Party II has denied the above contention of Party I. Shri P. Gaonkar has reiterated the above pleadings in his affidavit in evidence. In his cross-examination Shri P. Gaonkar has denied the suggestion that no new workers are employed by Party II after terminating the services of Party II. Shri Prasad Sawal has not made any statement on the above subject matter. Further, the suggestion put to Shri Shrikant Bhatikar that Party II has employed new helpers after termination of services of these employees, is denied by him. In the above context it is the submission of ld. advocate for Party II the dispute regarding re-employment in terms of Section 25-H of the Act is not referred for adjudication and therefore it is not open for Party I to adjudicate this issue. In support of the above submission ld. advocate for Party II relied on the judgment in the case of **Karnal Central Co-operative Bank Ltd. v/s Industrial Tribunal, Rohtak and Ors. 1994 (69) F.L.R. 1006**, in which it is observed that when the dispute regarding re-employment in terms of section 25-H has not been referred to the Labour Court, the same cannot be adjudicated upon. It is further observed in this judgment that the jurisdiction of Labour Courts and Tribunals is circumscribed by the provisions of section 10 (4) of the Act according to which the Labour Court has to confine its adjudication to the points of dispute specifically referred to it u/s 10 (1) of the Act.

34. I find force in the above submissions of ld. advocate for Party II and as it is not legally permissible for Party I to agitate the subject matter covered by Section 25-H of the Act in this reference, the arguments advanced on this subject cannot be accepted, Hence my findings.

35. *Issue No. 5:* In view above discussion, I am of the opinion that Party I workmen are not entitled to any relief.

36. In the result, I pass the following:

ORDER

1. It is hereby held that the action of the management of M/s. Hotel Mandovi, Panaji, Goa, in terminating the services of the workmen namely, 1) Shri Purshottam M. Gawade, Helper, 2) Shri Purshottom A. Gawade, Helper, 3) Shri Prakash Nagvenkar, Maintenance Helper and 4) Shri Prasad Sawal, Waiter with effect from 20-9-2001, is legal and justified.

2. Workmen 1) Shri Purshottam M. Gawade, Helper, 2) Shri Purshottom A. Gawade, Helper, 3) Shri Prakash Nagvenkar, Maintenance Helper and 4) Shri Prasad Sawal, Waiter are therefore not entitled to any relief.

3. No order as to costs.

Inform the Government accordingly.

Sd/-
(B. K. Thaly),
Presiding Officer
Industrial Tribunal-
cum-Labour Court.

Department of Law & Judiciary

Law (Establishment) Division

—
Order

No. 2/12/2014-LD(Estt.)/1500

Governor of Goa is pleased to promote on ad hoc basis the following Head Clerks/UDCs to the post of Civil Registrar-cum-Sub-Registrar (Group 'B', Gazetted) in the Pay Band-2 ` 9,300-34,800 with Grade Pay of ` 4,200/- in the Registration Department, with immediate effect.

1. Smt. Shubha H. Desai.
2. Smt. Sujata S. Raut Dessai.
3. Smt. Urmia Umesh Tari.
4. Shri Premanand K. Dessai.

2. The above ad hoc appointments shall be for a period of one year in the first instance or till the post is filled on regular basis, whichever is earlier.

3. The above ad hoc appointments will not bestow on the promoted officer any claim for regular appointment and the services rendered on ad hoc basis in the grade will not count for the purpose of seniority in that grade or for eligibility for promotion to the next higher grade.

4. The expenditure towards the salary and other allowances shall be debited to the Budget Head of the Registration Department.

5. Consequent upon promotion of the above officials, Governor is pleased to order their posting as Civil Registrar-cum-Sub-Registrar in the Registration Department as shown below with immediate effect.

Sr. No.	Name of the official	Present post held	Posted on promotion as CR & SR
1	2	3	4
1.	Smt. Shubha H. Dessai	Head Clerk	Headquarters, Panaji.
2.	Smt. Sujata S. Raut Dessai	Head Clerk	Quepem.
3.	Smt. Urmia Umesh Tari	UDC	Satari.
4.	Shri Premanand K. Dessai	UDC	Canacona.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).
Porvorim, 15th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(111)/1416

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Ms. Madhumita Avadhut Nayak Salatry, Advocate, Porvorim, Bardez-Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Bardez Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).
Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(116)/1418

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Shri Vilas Soma Goltekar, Advocate, Dhargal, Pernem, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Bardez Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).
Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(113)/1432

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Shri Mariano Francisco Christopher D'Souza, Advocate, Curca, Ilhas, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Tiswadi Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).
Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(114)/1433

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Mrs. Darshana C. Gauns Desai alias Mrs. Darshana S. Naik Desai, Advocate, Navelim, Salcete, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Salcete Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).
Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(120)/1435

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952)

read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Shri Sandip alias Babi Ramkrishna Parab, Advocate, Vasco-da-Gama, Goa, as a Notary for a period of five years with effect from 8th July, 2014 for the area of Mormugao Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).

Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(112)/1454

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Mrs. Karuna Shriram Bakre, Advocate, Vithalapur, Sankhali, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Bicholim Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).

Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(115)/1455

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Mrs. Varsha Naik Volvoikar, Advocate, Sancoale, Cortalim, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Mormugao Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).

Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(117)/1456

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Miss Deepali Zilu Naik, Advocate, Panaji, Goa as a Notary for a

period of five years with effect from 8th July, 2014 for the area of Tiswadi Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).

Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(118)/1457

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Shri Shridhar Shrikrishna Kamat, Advocate, Sirsaim, Thivim, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Bardez Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).

Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(119)/1458

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Shri Linus Emmanuel, Advocate, Panaji, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Tiswadi Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).

Porvorim, 8th July, 2014.

Notification

File No. 8-7-2014-LD (Estt)(121)/1459

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Mrs. Sudha Santosh Lad alias Sugandha Ramchandra Patil, Advocate, Mercas, Goa as a Notary for a period of five years with effect from 8th July, 2014 for the area of Tiswadi Taluka.

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Estt.).

Porvorim, 8th July, 2014.

Department of Public Health

Order

No. 6/9/2002-III/PHD (Part)

Read: Order No. 6/9/2002-III/PHD dated 10-05-2013.

Government is pleased to extend the ad hoc promotion of Dr. Maria Yvonne D'Silva Pereira, Professor in Psychiatry, Institute of Psychiatry & Human Behaviour, Bambolim-Goa for a further period of one year with effect from 10-05-2014 to 09-05-2015, or till the post is filled on regular basis, whichever is earlier.

This issues with the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/35(1)/2007/461 dated 13-06-2014.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).
Porvorim, 30th June, 2014.

Order

No. 6/10/2002-III/PHD

Read: 1) Memorandum No. 6/10/2002-III/PHD dated 19-05-2014.

2) Corrigendum No. 6/10/2002-III/PHD dated 01-07-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/35(2)2013/446 dated 14-02-2014, Government is pleased to appoint Dr. Ravikant Gajanan Pinjarkar to the post of Clinical Psychologist (Group 'A', Gazetted) in the Institute of Psychiatry and Human Behaviour, Bambolim on temporary basis in the pay scale of Pay Band-3 ` 15,600-39,100+ Grade Pay of ` 6,600/- with immediate effect and as per the terms and conditions contained in the Memorandum cited above.

Dr. Ravikant Gajanan Pinjarkar shall be on probation for a period of two years.

Dr. Ravikant Gajanan Pinjarkar has been declared medically fit by the duly constituted Medical Board.

The appointment is made subject to the verification of his character and antecedents. In the event of any adverse remarks noticed by the Government on verification of his character and antecedents, his services shall be terminated.

The above appointment is made against the vacancy occurred due to revival of one post of Clinical Psychologist vide Order No. 4/16/2001-III/PHD(Part-III) dated 14-06-2013.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 2nd July, 2014.

Order

No. 22/4/2002-I/PHD

Read: Memorandum No. 22/4/2003-I/PHD dated 25-02-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/24(1)/2012/415 dated 28-01-2014, Government is pleased to appoint Shri Vasishtha D. Kotecha to the post of Assistant Pharmaceutical Chemist (Group "B", Non-Gazetted) in the Pay Band-2 ` 9,300-34,800+ 4,200 Grade Pay under the Directorate of Health Services with immediate effect as per the terms and conditions contained in the Memorandum cited above.

Shri Vasishtha D. Kotecha shall be on probation for a period of two years.

Shri Vasishtha D. Kotecha is posted at Sub-District Hospital, Ponda against the post created vide Order No. 47/10/2011-I/PHD dated 16-8-2011 and revived the same vide Order No. 22/4/2002-I/PHD dated 04-07-2014.

Shri Vasishtha D. Kotecha has been declared medically fit by the Medical Board. His appointment is made subject to the verification of his character and antecedents. In the event of any adverse matter noticed by the Government on verification of character and antecedents, his services shall be terminated.

This supersedes earlier Order of even number dated 02-06-2014.

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).
Porvorim, 7th July, 2014.

Order

No. 38/138/2012-I/PHD

Government is pleased to recognize "R. G. Stone Hospital, Porvorim-Goa" for the purpose of Mediclaim under Mediclaim scheme and for

Medical Reimbursement of Government Employees, Freedom Fighter, MLAs under the Central Service (MA) Rules, 1944 for “dialysis in the Renal failure cases” restricting the amount to Rs. 1,300/- for dialysis or Rs. 13,000 per month for a minimum of 10 dialysis. The above Hospital shall not charge extra amount in any manner to the patient.

This issues in supersession of order No. 38/138/2012-I/PHD dated 05-06-2013.

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).
Porvorim, 8th July, 2014.

Order

No. 4/19/2002-II/PHD/Part

Read: Memorandum No. 4/19/2002-II/PHD/Part dated 27-05-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/30(9)/2011/548 dated 09-05-2014, Government is pleased to appoint Dr. Gaurish Tulsidas Ganjekar to the post of Assistant Lecturer in Anaesthesiology (ICU) in the Department of Anaesthesiology in Goa Medical College, Bambolim on temporary basis in the Pay Band-3, ` 15,600-39,100+ Grade Pay of ` 5,400/- with immediate effect and as per the terms and conditions contained in the Memorandum cited above.

Dr. Gaurish Tulsidas Ganjekar shall be on probation for a period of two years.

Dr. Gaurish Tulsidas Ganjekar has been declared medically fit by the Medical Board.

The appointment is made subject to the verification of his character and antecedents. In the event of any adverse remarks noticed by the Government on verification of his character and antecedents, his services shall be terminated.

The appointment is made against the vacancy occurred due to creation of the posts of Assistant Lecturer in Anaesthesiology(ICU) vide Order No. 4/4/2010-II/PHD dated 04-08-2011 and subsequently revived vide Order No. 4/19/2002-II/PHD/Part dated 26-02-2014.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).
Porvorim, 9th July, 2014.

Order

No. 11-3-89-IV/PHD/6

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/14(7)/2014/617 dated 23-06-2014, Government is pleased to promote Dr. Gauri Sardessai, Lecturer in Periodontics to the post of Assistant Professor in Periodontics in Goa Dental College and Hospital, Bambolim on regular basis in the Pay Band-3, ` 15,600-39,100 with Grade Pay of ` 6,600/- and other allowances to be fixed as per rules with immediate effect.

Dr. Gauri Sardessai shall be on probation for a period of one year.

The promotion is made against the vacancy occurred due to creation vide Order No. 4/1/2009-IV/PHD/Part dated 20-06-2013.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).
Porvorim, 9th July, 2014.

Order

No. 38/242/2006-I/PHD

Read: Government order No. 38/242/2006-I/PHD dated 19-10-2012.

Sanction of the Government is hereby accorded to include the Injection Avastin costing of ` 9,000/- for the treatment of Vitreo retinal services and Orbit/Oculoplasty service at Vision Multispeciality Hospital, Mapusa for the purpose of Mediclaim under Mediclaim scheme and for Medical Reimbursement of Government Employees, Freedom Fighter, MLAs under the Central Service (MA) Rules, 1944.

This issues with the concurrence of Finance (Exp) Department vide their U.O. No. Fin (Exp)/1447609 dated 30-06-2014.

By order and in the name of the Governor of Goa.

Maria Seomara de Souza, Under Secretary (Health-II).

Porvorim, 10th July, 2014.

Order

No. 47/62/2010-I/PHD (Pf-II)

Government is pleased to accept the resignation dated 24-04-2014 tendered by Dr. Vishal R.

Sardesai, Medical Officer (on contract basis) at Primary Health Centre, Balli, under Directorate of Health Services w.e.f. 10-05-2014. He stands relieved from the post w.e.f. the same date i.e. 10-05-2014 (b.n.). He shall make payment of 14 days balance towards notice period as per clause 5 of agreement signed by him.

By order and in the name of the Governor of Goa.

Maria Seomara de Souza, Under Secretary (Health-II).

Porvorim, 10th July, 2014.

Order

No. 4/3/2005-II/PHD/Vol. I

On the recommendation of the local Departmental Promotion Committee, the Government is pleased to promote Dr. Guruprasad Pednekar, Associate Professor in Obstetrics & Gynaecology to the post of Professor in Obstetrics & Gynaecology on ad hoc basis in Goa Medical College, Bambolim for a period of one year or till the post is filled on regular basis, whichever is earlier in the pay scale of Pay Band-4, ` 37,400-67,000 with Grade Pay of ` 8,700/- and other allowances admissible as per rules.

The above ad hoc appointment shall not bestow on him any claim for regular appointment or the service rendered by him on ad hoc basis in the grade shall not be counted for the purpose of seniority in the grade or for eligibility for promotion to the next higher grade, if any.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 14th July, 2014.

Order

No. 4/23/2002-II/PHD/Part 1

Read: Memorandum No. 4/23/2002-II/PHD/Part I dated 26-06-2014.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/30(1)/2014/604 dated 09-06-2014, Government is pleased to appoint Dr. Raghoba Tucaram Gaonkar (OBC) to the post of Lecturer in the Department of Medicine in Goa Medical College & Hospital, Bambolim-Goa on temporary basis in the Pay Band-3, ` 15,600-39,100+ Grade Pay of ` 6,600/- with immediate effect and as per

the terms and conditions contained in the Memorandum cited above.

Dr. Raghoba Tucaram Gaonkar shall be on probation for a period of two years.

The character and antecedents of Dr. Raghoba Tucaram Gaonkar has been verified by the District Magistrate, North Goa District, Panaji-Goa and he has also been declared medically fit by the Medical Board at the time of appointment as Junior Physician on regular basis under Directorate of Health Services, Panaji.

The appointment is made against the vacancy occurred due to creation of the posts of Lecturer in Medicine vide Order No. 4/19/2009-II/PHD dated 12-01-2011.

By order and in the name of the Governor of Goa.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 17th July, 2014.

Notification

No. PS(H)/2/NC/2012

Read: 1) Notification No. PS(H)/2/NC/2012 dated 05-06-2013.

2) Notification No. PS(H)/2/NC/2012 dated 19-05-2013.

The Government of Goa is pleased to extend the term of Goa Nursing Council members till 31st December, 2014 as the estimated minimum period for registration of nursing personnel and holding elections will not be affected before six months.

By order and in the name of the Governor of Goa.

D. G. Sardesai, Addl. Secretary (Health).

Porvorim, 14th July, 2014.

Certificate

No. 44/3/2014-I/PHD

Read: 1) Memorandum No. 45/5/2009-I/PHD dated 24-10-2013.

2) Government Order No. 23/4/98-I/PHD dated 11-12-2013.

Certified that the character and antecedents of Dr. Ruby Ramnath Naik, Public Health Dentist (Group 'A', Gazetted) under Directorate of Health Services has been verified by the District Magistrate, North Goa, Panaji vide letter No. 2/11/

/2013-MAG/VAC/1491 dated 23-06-2014 and it is revealed that there is nothing adverse reported against her.

Maria Seomara de Souza, Under Secretary (Health-II).

Porvorim, 1st July, 2014.

Certificate

No. 44/9/2014-I/PHD

Read: 1) Memorandum No. 22/4/2003-I/PHD dated 25-02-2014.

2) Government Order No. 22/4/2002-I/PHD dated 02-06-2014.

3) Government Order No. 22/4/2002-I/PHD dated 07-07-2014.

Certified that the character and antecedents of Shri Vasishtha D. Kotecha, Assistant Pharmaceutical (Group 'B', Gazetted) under Directorate of Health Services has been verified by the District Magistrate, North Goa, Panaji vide letter No. 2/11/2013-MAG/VCA/1194 dated 21-05-2014 and it is revealed that there is nothing adverse reported against him.

Maria Seomara de Souza, Under Secretary (Health-II).

Porvorim, 10th July, 2014.

Certificate

No. 4/11/2011-II/PHD

Read: Government Order No. 4/11/2011-II/PHD dated 15-05-2014.

Certified that the character and antecedents of Dr. Roma Subhash Varik, Assistant Professor in the Department of Paediatric Surgery in Goa Medical College and Hospital, Bambolim appointed vide above referred Order has been verified by the Addl. District Magistrate, South Goa District, Margao and nothing adverse has come to the notice of the Government.

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 16th July, 2014.

Department of Public Works

Office of the Principal Chief Engineer

Order

No. 34/3/2014/PCE-PWD-ADM(II)/81

Read: Order No. 34/3/2014/PCE-PWD-ADM (II)/42 dated 04-06-2014.

Government is pleased to order the posting of the below mentioned Executive Engineers/ Surveyor of Works (Civil/Mechanical/Electrical) in Public Works Department who were promoted on ad hoc basis and awaiting postings vide order referred to above in the places shown against their names in column No. (3) below with immediate effect.

Sr. No.	Name of the Officer	Place of posting on promotion
1	2	3
1.	Shri Flaviano J. Miranda	As Executive Engineer in Goa Tourism Dev. Corporation Ltd., Panaji on deputation.
2.	Shri Sunil M. Raikar	As Executive Engineer, Division II (Roads), Panaji vice Shri M. P. Velayudhan, EE transferred.
3.	Shri K. G. Radhakrishnan	As Surveyor of Works, Circle Office II, Altinho, Panaji in the existing vacancy.
4.	Shri Dattaram K. Shet	As Executive Engineer in JICA Project Panaji on deputation in the existing vacancy.
5.	Shri Bharat R. Naik (M/E)	As Executive Engineer, Division XXII (M/E), Margao in the existing vacancy, thereby relieving Shri V. P. Bharné, SE from addl. charge.
6.	Shri Anant P. Gaonkar (M/E)	As Executive Engineer, Division XII, Sanguem in the existing vacancy, thereby relieving Shri S. R. Paranjape, SE from addl. charge.

The above officers shall draw their pay and allowances as Executive Engineer/Surveyor of Works (Civil/Mechanical/Electrical) from the date of their joining in the new place of postings.

The deployment of the officers at Sr. Nos. (1) & (4) above, shall be governed by the terms & conditions of the Government O. M. No. 13/4/74-PER dated 12-2-1999 and 11-01-2007 as amended from time to time of the Department of Personnel, Secretariat, Panaji.

The officers at Sr. Nos. (4) & (6) shall continue to hold the additional charge of their respective posts in the current place of postings in addition to their own duties, until further orders.

Further, the Government is pleased to order the transfers of the following Executive Engineers/ Surveyor of Works (Civil) in this Department and post them in the places shown against their names in column No. (4) below with immediate effect in public interest.

Sr. No.	Name of the Officer	Present place of working	Place of posting on transfer
1	2	3	4
1.	Shri Ramnath Shenvi	Executive Engineer, Division XVI (Bldgs.), Ponda	As Executive Engineer in Sports Authority of Goa on deputation.
2.	Shri M. P. Velayudhan	Executive Engineer, Division II (Roads), Panaji	As Executive Engineer (Legal), Altinho, Panaji in the existing vacancy.

The deployment of the officer at Sr. No. 1 above shall be governed by the terms & conditions of the Government O. M. No. 13/4/74-PER dated 12-2-1999 and 11-01-2007 as amended from time to time of the Department of Personnel, Secretariat, Panaji.

Shri Vijay S. Mardolkar, Executive Engineer, Division XVIII (Roads), PWD, Ponda shall hold the additional charge of the post of Executive Engineer, Division VI (Roads), Margao in addition to his own duties, until further orders, thereby relieving Shri Rajendra J. Kamat, Executive Engineer, Division XIV (NH), Margao from addl. charge.

By order and in the name of the Governor of Goa.

J. J. S. Rego, Principal Chief Engineer & ex officio Addl. Secretary (PWD).

Panaji, 9th July, 2014.

Order

No. 14-17-2012-PCE-PWD-ADM (II)/57

The Assistant Engineer, SD IV, WD XIII, Mapusa Goa is hereby designated as Assistant State Public Information Officer under sub-sections (1) & (2) of Section 5 of the Right to Information Act, 2005

(hereafter called the "said Act") for caring out the functions prescribed under the said Act.

By order and in the name of the Governor of Goa.

J. J. S. Rego, Principal Chief Engineer & ex officio Addl. Secretary (PWD).

Panaji, 27th June, 2014.

Order

No. 34/3/2014/PCE-PWD-ADM(II)/91

Government is pleased to promote Shri A. J. George Pereira, Assistant Engineer/Assistant Surveyor of Works/Engineering Assistants (Civil) on ad hoc basis to the post of Executive Engineer/ Surveyor of Works (Civil) in Public Works Department, Group 'A', Gazetted in the Pay Band ` 15,600-39,100+ G.P. 6,600 with immediate effect for a period of one year or till the post is filled on regular basis whichever is earlier and post him as Executive Engineer in Goa Tourism Dev. Corporation Ltd., Panaji on deputation.

The above ad hoc promotion will not bestow on the promoted officer any claim for regular promotion nor the service rendered on ad hoc basis in the grade will be counted for the purpose of seniority in that grade for eligibility for promotion to the next higher grade.

By order and in the name of the Governor of Goa.

J. J. S. Rego, Principal Chief Engineer & ex officio Addl. Secretary (PWD).

Panaji, 18th July, 2014.

◆◆◆
Department of Revenue

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Notification

No. 22/13/2013-RD

Whereas, by Government Notification No. 22/13/2013-RD dated 21-06-2013 published in Series II No. 14 of the Official Gazette dated 04-07-2013 and in two newspapers (1) "The Times of India, Goa " and (2) "Goa Doot" both dated 26-06-2013 it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land), was needed for public purpose, viz. Acquisition of land bearing Chalta No. 29, 30, 31, 32, 33, 34 & 35 of P.T. Sheet No. 38 for re-development of Panaji Municipal Market Phase-III for Corporation of the City of Panaji.

And whereas, the Government of Goa (hereinafter referred to as “the Government”) after considering the report made under sub-section (2) of Section 5-A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as “the said land”).

Now, therefore, the Government hereby declares under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also hereby appoints under clause (c) of Section 3 of the said Act, the Deputy Collector & SDO, Sub-Division, Panaji to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Deputy Collector & SDO, Sub-Division, Panaji till the award is made under Section 11 of the Act.

SCHEDULE

(Description of the said land)

<i>Taluka:</i> Tiswadi		<i>City:</i> Panaji
Survey No./ Sub. Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
38/29	O: Manohar Hiru Naique Parulekar.	361
38/30	O: Manohar Hiru Naique Parulekar.	185
38/31	O: Manohar Hiru Naique Parulekar.	23
38/32	O: Manohar Hiru Naique Parulekar.	328
38/33	O: Manohar Hiru Naique Parulekar.	10
38/34	O: Manohar Hiru Naique Parulekar.	7

1	2	3
38/35	O: Manohar Hiru Naique Parulekar.	29
<i>Boundaries :</i>		
North : Road.		
South : Chalta No. 36 of P. T. Sheet No. 38.		
East : Road.		
West : Road.		
		Total: 943

By order and in the name of the Governor
of Goa.

Ashutosh Apte, Under Secretary (Revenue-I).

Porvorim, 21st July, 2014.



Department of Transport

Directorate of Transport

Notification

No. 5/5/90-Tpt/2014/2481

In exercise of powers conferred by Clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Vehicle No. GA-03/N-2222 of make Ashok Leyland (Mini-Bus) bearing chassis No. MDR139685 and Engine No. MDH332105 of model October, 2005 owned by Domnic & Jo-an Ministries, H. No. 315/4, Near Sodiem Panchayat, Tropa Vaddo, Sodiem, Siolim Bardez-Goa, from payment of tax due to this State, being a Charitable Trust.

Arun, L. Desai, Director & ex officio Addl Secretary (Tpt.).

Panaji, 16th July, 2014.

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